

THE NATIONAL OMBUDSMAN'S

2000 REPORT TO CONGRESS:

BUILDING SMALL BUSINESS—AGENCY

PARTNERSHIPS

FINAL

# U.S. Small Business Administration

Aida Alvarez, Administrator

Gail A. McDonald, National Ombudsman

Hatem H. El-Gabri, Senior Counsel  
Elizabeth Gonzalez, Staff Asst., Cust. Affairs  
John T. Greiner, Director, Regulatory Review  
Elestine Harvey, Staff Asst., Program Delivery  
Susan Kramer, Director, Program Development.

Cora McGee, Staff Asst., Regulatory Review  
Margaret Pascual, Paralegal  
Gary Peele, Director, Program Delivery  
Lisa Roemer, Staff Asst., Program Development  
.

## 2000 Fairness Board Members

I	New England States Region 1	Vinh Cam Larry Morse Roxanna Adams Judith Obermayer Ronald Williams	VI	Southern States Region 6	Larry Mocha Wallace Caradine Elise McCullough Massey Villarreal
II	Mid Atlantic States Region 2	E. Peter Ruddy Phyllis Hill Slater Sandra Lee Joan Haberle Manuel Cidre	VII	Heartland States Region 7	Dan Morgan J. Scott George Alonzo Harrison Stella Olson Joanne Stockdale
III	South Atlantic States Region 3	Victor Tucci Ann Parker Maust Shawn Marcell Wilkins McNair, Jr. Kenneth Rodriguez	VIII	Rocky Mountain States Region 8	Linda Nielsen Albert Gonzales Vernon Thompson Mary Thoman Donna Davis
IV	Southeastern States Region 4	Rita Mitchell Robert Clark LeRoy Walker, Jr. Livia Wisenhunt Jeffery Adduci	IX	Western States Region 9	Kathy Chavez Napoli Tim Moore Thomas Guthrie C.K. Tseng Joseph Cerbone
V	Midwestern States Region 5	Thelma Ablan John Hexter Reid Ribble Hardie Blake Donald Magett	X	Northwestern States Region 10	Clyde Stryker Gretchen Mathers Keith Sattler Serena McAlvain Morris Thompson <sup>1</sup>

---

<sup>1</sup> We are saddened by the death of Mr. Thompson. Mr. Thompson was one of Alaska's most prominent Native American advocates. We were privileged to work with him on behalf of Alaska and the nation's small businesses.

# **The National Ombudsman's 2000 Report to Congress: Building Small Business – Agency Partnerships**

## **Table of Contents**

<b><u>Introduction</u></b> .....	<b>1</b>
<b><u>Recommendations</u></b> .....	<b>4</b>
<b><u>2000 Enforcement &amp; Compliance Issues</u></b> .....	<b>9</b>
Case Studies	
<b><u>The State of Federal Agency Regulatory Enforcement Fairness for Small Businesses</u></b> .....	<b>13</b>
Evaluating Agency Enforcement and Compliance Activities	
Agency Responses to the 1999 Recommendations	
Referral to Federal Agency Inspectors General	
Agency Participation in RegFair Board Hearings	
<b><u>Sharing the Perspectives of the RegFair Boards and Small Businesses</u></b> .....	<b>31</b>
Perspectives of the RegFair Boards	
Perspectives of Small Businesses	
<b><u>Helping Small Business</u></b> .....	<b>35</b>
Notification of Small Business' Right to Comment	
High Level, Independent Agency Review	
Small Business Comments	
RegFair Board Hearings	
Guarding Against Retaliation	
Matters of Concern to Small Businesses	
Helping Agencies Develop Results-Driven Compliance Programs	
<b><u>Agency Best Practices</u></b> .....	<b>40</b>
<b><u>Marketing Initiatives with Small Businesses</u></b> .....	<b>44</b>
Moving RegFair On-Line	
Marketing RegFair Through SBA's Program and Field Offices	
Working with the U.S. Postal Service	

[Outreach](#).....48

RegFair Program Activities

RegFair Awards

Office of the National Ombudsman Activities

RegFair Outreach Innovations

Working to Pass Regulatory Fairness Legislation at the State Level

[Appendices:](#).....56

- A. Small Business Feedback in 1999
- B. Summary of 1999 Associations of the Month
- C. SBA Programs Marketing RegFair
- D. Follow-up of 1997-98 Case Studies
- E. RegFair Public Hearings
  - 1. Hearing Promotion
  - 2. Hearing Planning
  - 3. Attendance and Participation at Hearings
  - 4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings
  - 5. Synopses of 1999 Regional Regulatory Fairness Board Hearings
- F. RegFair Materials
  - 1. Brochure
  - 2. Appraisal Form
  - 3. RegFair Card
  - 4. Board list, map, Roles & Responsibilities and Code of Ethics
- G. Agency comments on 2000 Report
- H. National Ombudsman's Previous Annual Recommendations

## **Message from Administrator Aida Alvarez**

Three and a half years ago the President signed into law the Small Business Regulatory Enforcement Fairness Act (SBREFA) which instituted several important reforms to help small business. Several of the Act's provisions codified initiatives President Clinton and Vice President Gore had instituted through the National Performance Review, such as requiring agencies to adopt and publish compliance policies. Both the Administration and the Congress recognized the need to reduce the regulatory burdens that fall disproportionately on small businesses.

One important vehicle to accomplish this objective was the establishment within SBA of a National Ombudsman and 10 regional Small Business Regulatory Fairness Boards, whose work and accomplishments I am proudly submitting today. I am especially pleased to be able to report that the Government and the private sector are working in partnership to implement good public policy that is also responsive to the concerns of small business. What Congress anticipated and what SBA expected is in fact happening:

- more and more small businesses are working with the Office of the National Ombudsman and agencies to develop concrete solutions to their enforcement concerns; and
- joint efforts are triggering systemic improvements in agency enforcement practices.

I want to thank the small business leaders who have volunteered significant time and energies to serve as Regulatory Fairness Board Members. Their work and commitment is proof that small business has indeed a vital stake in worker safety, a clean environment and good government. We are truly proud and grateful to have them as partners in this effort. I also want to thank all the small businesses that shared their compliance and enforcement experiences with the Boards—information that helped guide and formulate the recommendations contained in this year's report.

Finally, I am pleased to announce the appointment of Gail A. McDonald as the new National Ombudsman. Ms. McDonald has extensive experience both as a regulator and a reformer. I am confident that the experience she brings to her new assignment will make her an effective National Ombudsman, safeguarding the interests of America's small businesses.

## Message from the National Ombudsman

As the newly appointed Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman), I am very pleased to join Administrator Aida Alvarez and the Members of the regional Small Business Regulatory Fairness Boards in presenting the 2000 Report to Congress: *Building Small Business–Agency Partnerships*.

The 2000 Report provides Congress and the Administration a thorough review of the efforts of the National Ombudsman and the Small Business Regulatory Fairness Boards to respond to small business owners on their views concerning the regulatory enforcement and compliance environment. This year's Report shows progress in improving communication on regulatory enforcement issues and making agencies sensitive to the conditions that are essential to the prosperity of small business. We continue to make strides in reaching a broader small business audience. We have made significant advances in both gauging the pulse of small business and making sure their issues are fully expressed to agency officials who have the authority to make needed changes. In keeping with Administrator Alvarez's call to transform SBA into a leading edge institution, we are well on the way to making full program participation available on the World Wide Web.

The 2000 Report provides a review of key enforcement and compliance issues, small business perceptions, and 10 small business-driven recommendations that are geared to improving the regulatory enforcement environment. Last year the Office expanded existing partnerships and created many new ones. The Report demonstrates how these partnerships have improved agency enforcement practices; heightened the impact of small business feedback; enabled the development of innovative enforcement and compliance solutions; and enhanced Regulatory Fairness Board Member participation.

Based on the recommendations of small businesses and agencies, the National Ombudsman has prioritized four goals: enhanced small business feedback; greater agency accountability; better small business—agency communication; and more creative partnerships between the small business and Federal agency communities. These four goals are the foundation on which all partners will build a regulatory enforcement environment that is fairer and friendlier to small businesses and that ultimately results in greater compliance and small business prosperity. The Administration, Congress, small businesses, their trade associations, and Federal agencies agree that Federal resources are better spent helping small businesses comply with the law, rather than taking punitive action against them. The 2000 Report to Congress demonstrates that together we are making progress on our shared goals. This year, I am especially grateful to Hatem H.

El-Gabri for the strong leadership he demonstrated as Acting National Ombudsman with the departure of Peter W. Barca. I look forward to working with Mr. El-Gabri on many important projects.

On behalf of the Office of the National Ombudsman and the 50 RegFair Board Members, I wish to thank the Congress and the heads of the affected Federal agencies for their support and continuing leadership in making the Federal regulatory enforcement and compliance environment fairer and friendlier to our Nation's 25 million small businesses.

## **Introduction**

President Clinton, Congress, and the 1995 White House Conference on Small Business delegates all agreed on the need to make the regulatory enforcement and compliance environment fairer and friendlier for small businesses. Together they made the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) a reality. SBREFA, born through a bipartisan government and private sector partnership, sought concrete solutions to long-standing regulatory fairness concerns.

Too often Federal agencies and small businesses were not working in partnership to achieve important public policy goals with minimized costs and impact on affected industries. Too often, enforcement and compliance activities have bewildered, frustrated, and angered small business owners who struggle to comply. Too often, agencies were at a loss for how they could achieve their regulatory mandate without using punitive enforcement and compliance activities.

Created by SBREFA, the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) and the regional Small Business Regulatory Fairness Boards (RegFair Boards) work to bridge the communication gap between the Nation's small business communities and Federal agencies. The Office of the National Ombudsman facilitates the development of specific solutions that address small business enforcement and compliance concerns. In building the bridge, the Office relies on small business and agency enforcement and compliance activity feedback. The National Ombudsman evaluates and rates agency enforcement and compliance activities and annually makes specific recommendations to improve the regulatory environment. For this reform process to be most effective, the National Ombudsman and the RegFair Boards work in concert with small businesses and agencies.

From program inception, the Office of the National Ombudsman and the RegFair Boards understood that small business owners want to communicate without fear to high-level, independent agency officials who will respond promptly to their comments. Enabling this dialog is one of RegFair's most important roles. At the same time, responsible officials throughout the government have demonstrated that they want to receive feedback and insure that positive policies are carried out within their agencies. Small businesses and the government agree that resources are better spent helping companies comply with regulations.

We recognize that no one has a monopoly on caring about the environment, worker's safety, or fraud, waste and abuse. These are concerns of both small business and the government, and we are here to facilitate the regulatory fairness dialog. Within this framework, the National Ombudsman, with the advice of the RegFair Boards, administers a unique and dynamic program that fosters regulatory enforcement and compliance fairness.

Last year, the Office of the National Ombudsman worked to maintain existing partnerships while building new ones. Reaching small businesses across the country is a top priority and a significant challenge. The Regulatory Fairness Program (RegFair) hearings, Associations of the Month, Board Member Outreach, and agency RegFair notification to small businesses, at the time of enforcement or compliance, all aim to inform small businesses about regulatory fairness. The National Ombudsman and RegFair Boards believe future inroads to the small business community require the development of new partners and expanding the role of existing partners.

Progress in reaching small businesses and improving the regulatory enforcement and compliance environment is occurring on many fronts. Many agencies have moved beyond simple cooperation with the National Ombudsman, and several have become active partners in informing small businesses about regulatory fairness and improving their enforcement and compliance practices.

SBA Administrator Aida Alvarez committed the agency to use existing program and field office marketing efforts to inform its small business customers about their rights to regulatory fairness and their right to comment on any Federal agency's enforcement and compliance activities. By utilizing SBA's substantial small business portfolio, small businesses that receive assistance from any of SBA programs will also learn about their right to comment on the enforcement or compliance activities of government agencies.

The U.S. Postal Service is joining the Office of the National Ombudsman in a major pilot project to distribute RegFair materials in selected Post Offices. The Department of Housing and Urban Development began distributing RegFair Information Cards with its small business marketing efforts. The EPA Small Business Ombudsman includes RegFair material and contact information in its small business regulatory resource book. These agencies are commended for the leadership in helping to inform small businesses about regulatory fairness, and in turn building a fairer regulatory environment.

In step with Administrator Alvarez's efforts to make the Small Business Administration (SBA) a twenty-first century leading edge institution, the Office of the National Ombudsman is redesigning its small business comment process to allow full small business participation via the World Wide Web. The changes will also provide RegFair Board Members direct access to comments and increase the depth of review. With assistance of the SBA Chief Information Officer, the redesign will be completed early in 2000. The National Ombudsman and the RegFair Boards expect a greater percentage of web site visitors will provide feedback on their regulatory enforcement and compliance experiences.

Building partnerships fosters dialog and feedback. The National Ombudsman is using partnerships to improve the regulatory environment and raise the bar of small business-agency cooperation. By hearing from small business leaders the program helps foster national and regional efforts that address nettlesome enforcement and compliance concerns. Agencies and small businesses working together on task forces produce practical results. One notable example involved bringing together a regional EPA office with representatives of dry-cleaning establishments. The project began by exploring ways to address the regulatory concerns of that industry, while addressing what cleaners needed to do to comply with environmental regulations. The final result of the collaboration on hazardous solvents will be a comprehensive guide that will make it for small businesses to prevent pollution of the air, water and land.

Each small business comment presents multiple opportunities. First, it provides the small business an opportunity to get a timely, high-level, independent review and response to its concern. Second, it gives the agency an opportunity to demonstrate its responsiveness and learn about the impact their field practices have on small business. Third, the comment provides the National Ombudsman and the RegFair Boards the opportunity to evaluate agency performance, dissect the enforcement or compliance activity, and obtain recommendations directly from the small business. Finally, it provides the Administration and Congress an opportunity to address needed structural reforms.

One way, the Office of the National Ombudsman utilizes its partnerships with small businesses and agencies is by developing specific recommendations to Congress and the Administration on changes needed to systemically improve the enforcement and compliance environment for small businesses. These recommendations come directly from small business comments and testimony as well as from agencies in their efforts to address matters of concern to small business. Evaluating agencies on the adoption and implementation of the recommendations sets standards for fair enforcement and compliance practices. The recommendations and evaluations provide RegFair's principal partners: the Administration, Congress, small businesses, and trade associations, a record of current performance and areas needing improvement.

RegFair partnerships provide concrete advances and solutions to regulatory enforcement and compliance concerns. RegFair's success at raising the standards of regulatory fairness and agency accountability depends on the breadth and depth of its partnerships. The partnerships come in many forms. There are



small business owners who provide feedback at RegFair hearings on agency enforcement activities. Joint small business—agency task forces are working on clean air compliance. Agency officials are addressing small business RegFair comments. RegFair Board Members are reaching out to their small business communities to inform owners about RegFair and listen to their concerns.

The results of RegFair partnerships also come in many forms. Partnership results may take the form of correction of staff errors, clarification of agency enforcement or compliance policies, or modifications in agency rules to make compliance practical for small businesses. For example, agencies effectively notify small businesses of programs that promote business prosperity, solve small business-agency concerns, or improve agency training. In all instances, partnership benefits flow to all small businesses as changes affect the enforcement and compliance environment and are not limited to an isolated agency activity or to an individual small business. Positive partnership experiences and outcomes can then change expectations and ways of thinking. Agency officials and small businesses gain confidence that they can work together to address important public policy directives without short-changing small business enforcement and compliance interests.

Last year was an important building year for the Office of the National Ombudsman and the RegFair Boards. The Office developed many additional mechanisms to sustain existing partnerships and establish new ones. Agencies are increasingly being held to higher standards and are evaluated and rated on their enforcement and compliance performance. Small businesses are participating in increasing numbers. As the founding partners expected, solutions to regulatory enforcement and compliance concerns are being identified in the experiences of small businesses and the cooperative relationships they are building with agencies. We are proud to be facilitators of this collaborative process.

## **Recommendations**

The Office of the National Ombudsman and RegFair Boards are working with Federal agencies to create a more beneficial regulatory climate for the Nation's 25 million small businesses. More than just an annual effort, the recommendations are ongoing opportunities for agencies to define their relationships with small businesses.

Many Federal agencies have instituted, and additional agencies are encouraged to implement regulatory reform in the areas covered by the 2000 Recommendations as well as those made in past Annual Reports to Congress. The National Ombudsman's 2000 Recommendations follow immediately while the previous Annual Recommendations may be found in Appendix H. of this Report.

### **2000 Recommendations**

The recommendations for the 2000 Report to Congress urge agencies to raise the bar so that their internal culture increasingly reflects one of support and encouragement toward small business compliance with the laws and regulations of this country. What is needed is an approach by agencies of encouraging and showing small businesses why and how to comply with regulations. Agencies should reject both the "gotcha" mentality with its traditional emphasis on fines and penalties, and an environment divorced from education and partnerships with small business.

The National Ombudsman's recommendations were derived from the small business concerns received through written comments and testimony, RegFair Board Member experiences, and from information supplied by other interested parties, including agencies through their testimony at RegFair hearings. They include the recommendation, a statement of the issue, and an example, if required for illustration.

Some or all of the recommendations shown below will be incorporated into the National Ombudsman's evaluation and rating of agencies for the National Ombudsman's 2001 Report to Congress. Proposed evaluative criteria for the evaluations will be shared with agencies, small businesses and the RegFair Boards for feedback. The National Ombudsman will consider all of their suggestions.

#### **Recommendation 1**

To the extent practicable and before nationwide implementation, agencies should empirically test new or significantly modified enforcement and compliance policies that may affect small businesses through cooperative pilot projects. The pilots should be developed in partnership with affected industries and stakeholders and should consider the varying impact of policies across major demographic factors. Finally, agencies should fully address the feedback from pilot participants.

#### **Issue 1**

Small businesses and agencies agree that too often agency requirements that are traditionally developed, analyzed and publicly commented on have major unforeseen consequences. For small businesses, unforeseen consequences, either alone or in concert with other requirements, may have devastating and even bankrupting consequences. Modifications to agency requirements, if they occur, often come too late to stem the harm caused by new or modified requirements. The unforeseen impact of new or modified requirements frequently results in extra layers of paperwork, increased operating or production expenses, reduced jobs and profits, as well as time-consuming, expensive litigation. Many small businesses conclude that agencies do not understand their industry, the impact of agency requirements, or worse, that they do not care about the repercussions. (*See 2000 Enforcement and Compliance Issues.*)

Small businesses do not want to be subjected to requirements that are only theoretically analyzed or evaluated by unrealistic, narrow studies. Businesses want pilot projects that study the impact of agency requirements on each covered industry. Small businesses understand agency public notice and comment procedures, but know that there are usually very significant differences between the theoretical and practical applications of any new or modified requirement when it is implemented. It may be that a requirement is too difficult to comprehend, not feasible, costly, conflicts with other requirements, is a threat to safety, or fails to achieve its purpose.

The private sector and some Federal agencies already make extensive use of pilot projects. The projects result in increased profits in the private sector and better requirements and procurement in the government. Pilot projects may increase up-front costs but these investments pay handsome dividends. With pilot projects, agencies will be able to fine-tune new requirements, increase voluntary compliance, reduce punitive enforcement and compliance activity and minimize the costs and difficulty of implementing the necessary changes. Most importantly, a regulatory enforcement and compliance process resulting from a pilot program adds credibility to the Government's goals and objectives, and addresses small business concerns.

## **Recommendation 2**

Agencies should provide feasible compliance guidance to small businesses, but should not dictate the means by which small businesses achieve compliance.

## **Issue 2**

Small businesses believe that agencies too often apply a one-size-fits-all approach to a particular regulatory requirement, rather than establishing the regulatory goals and allowing small businesses to achieve those goals in the most cost-effective and operationally efficient manner for their particular business. Businesses believe that agencies too often focus on the process as opposed to the goal, which in many instances makes it more difficult and expensive for small businesses to achieve compliance.

### *Example:*

Roy Cohee, owns and operates C&Y Transportation (C&Y), a small trucking company in Casper, Wyoming, and has twenty-eight employees. C & Y have been in business for over thirty years. Mr. Cohee testified about his company's experiences with the U.S. Environmental Protection Agency (EPA) concerning allegations of a fuel spill at his site. EPA's inspection resulted in a list of deficiencies that were to be corrected within 30 days.

According to Mr. Cohee, he immediately began locating contractors to correct the deficiencies. However, in Wyoming, he could not find a single example of a twenty-five hundred-gallon trap needed to bring the used motor oil tank into compliance. When he called the EPA in Denver to obtain specifications for the containment device, he was told that they did not have that information and suggested that he look at others in the area. Mr. Cohee stated that the trap and other items needed to bring C & Y into compliance are mentioned in the Federal Register, but are listed as suggested items using words such as "should, recommend and suggested." Nevertheless, the EPA inspector insisted that C & Y construct the item, and Mr. Cohee estimated the cost of construction at nine to ten thousand dollars.

## **Recommendation 3**

Provided a violation does not involve serious injury or harm, agencies should institute programs that give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized. Agencies should also increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty.

### **Issue 3**

Small businesses often feel that an agency's only mission is to try to catch violations and penalize the companies. They believe good faith efforts to comply with a multitude of complex and changing requirements should weigh heavily on how agencies handle small business violations. They believe agencies should work with them to achieve compliance and limit the routine use of punitive sanctions.

#### *Example:*

The Federal Aviation Administration (FAA) has a special program that protects from severe penalties those businesses that immediately report a rule violation. The FAA's Reporting and Correction Policies provide that, under most circumstances, if a company self-discloses a violation that is not intentional, corrects the condition immediately, and takes steps to prevent it from recurring, a reduced penalty or no penalty will be imposed. FAA also performs "courtesy evaluations" of pilots and aircraft, without risk of enforcement if deficiencies are corrected. The agency collects data on these incidents to determine whether there are problems with a rule that must be addressed.

### **Recommendation 4**

When Federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum Federal standards, including SBREFA, are met. This includes a flow-down of all Federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable Federal standards.

### **Issue 4**

Federal agencies frequently delegate enforcement and compliance responsibilities to state and local governments. Such delegation may be efficient for the Government by reducing activities like duplicative inspections, and good for small businesses by reducing the layers of government. Small businesses are concerned that Federal agencies are not sufficiently policing the delegations of power to guarantee that the state or local government provides small businesses their regulatory fairness rights, including their right to comment directly to the Office of the National Ombudsman.

#### *Example:*

Lalit Sarin of Shelby Industries in Shelbyville, Kentucky addressed the lack of consistency of EPA regulations among Federal, state and local governments. He indicated that when Federal agencies delegate down to the states, due process does not flow down. Mr. Sarin's concern was not being able to meet with local officials to discuss a violation, because the right to meet was not included as a part of the city ordinance. He had to use the courts and the threat of a lawsuit to secure his rights. Mr. Sarin believes that when agencies turn over regulations to be implemented by the state or the counties, they must also make sure that public laws like SBREFA are part and parcel of that package.

### **Recommendation 5**

Agencies should make full use of Federal law that prohibits giving false information to the government or using the government as a tool to unjustly retaliate against employers. Agencies should notify individuals of their legal obligations to give truthful information and the penalties for giving false information. Agency staff should be well trained in evaluating the credibility of the information obtained and the information threshold necessary before undertaking an enforcement or compliance activity against a small business.

### **Issue 5**

Small businesses believe that disgruntled former and current employees retaliate against them by filing false complaints with Federal agencies alleging non-existent regulatory violations. Small businesses feel that

even though Federal law prohibits the submission of false information, actual agency practice does not deter the submission of false information by disgruntled employees.

### **Recommendation 6**

Agencies should carefully evaluate, in partnership with affected industries, the development and use of voluntary industry standards before considering or implementing new mandatory regulations.

### **Issue 6**

Small business owners have told the Office of the National Ombudsman and the RegFair Boards that Federal agencies too often assume that new mandatory regulations are the best and most cost effective means of achieving policy objectives. The National Ombudsman and RegFair Boards agree with small business owners that agencies should consider whether a voluntary national standard, arrived at in cooperation with affected parties, meets agency objectives. (*See 2000 Enforcement and Compliance Issues: Companies 134 and 803.*)

#### *Example:*

The Department of Commerce's National Institute of Standards and Technology (NIST) has effectively utilized voluntary standards. The NIST has successfully worked with industries to adopt standards voluntarily that are practical, achieve their regulatory purpose, and in most instances improve the economics of the affected industry.

### **Recommendation 7**

In an ongoing effort, Federal agencies should utilize internal offices that work with small businesses to inform small businesses about their rights to regulatory fairness, including the dissemination of RegFair material in mailings, at offices, and through existing outreach efforts. Such offices may include the Offices of Small & Disadvantaged Business Utilization and individual agency Ombudsmen.

### **Issue 7**

Small businesses believe that agencies can do more to leverage their existing outreach efforts to educate small businesses about their rights to regulatory fairness at minimal costs.

#### *Example:*

In 1999, the Department of Housing and Urban Development began distributing the RegFair information card at its small business events. The FCC, EPA, and other Federal agencies launched notable efforts as well.

### **Recommendation 8**

Agencies should conduct objective reviews of their implementation of SBREFA.

### **Issue 8**

Small businesses have told RegFair that agency—small business partnerships would be strengthened by objective reviews of agency implementation of SBREFA.

#### *Example:*

The Office of the National Ombudsman received a copy of the Environmental Protection Agency Inspector General's 1999 SBREFA audit. RegFair recommends objective reviews in order for the Federal government to realize additional gains in its continuing efforts to improve the regulatory environment for small business.

## **Recommendation 9**

Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

### **Issue 9**

Small businesses spend too many of their available working hours gathering data and completing reports for local, state and Federal agencies, without knowing why and without any benefit to the business. Small businesses believe agencies are not considering or do not understand that current reporting requirements divert too much time from small business operations.

#### *Example:*

Keith Price, vice president of finance for Shelby Industries in Shelbyville, Kentucky, offered testimony on the increasing paperwork burden resulting from the number of mandatory regulations, surveys, and applications that small businesses encounter on a daily basis. Data are requested by agencies, but the business is never informed of the results or sees a compilation of the data collected. Mr. Price illustrated his views by listing a number of reports that had to be completed for seven Federal agencies overseeing his small business. Although information requested was similar, agency forms were different and the small business had to answer each form separately. According to Mr. Price, agencies are not considering the duplication and actual time spent completing all their forms, which he estimated at 51 hours for all seven forms.

## **Recommendation 10**

Agencies must provide well-trained staff for inspections or compliance audits. Staff should be well versed in the particular industry, in applicable law and regulations, and compliance assistance. Agency personnel should work with small businesses, and not only focus on sanctions.

### **Issue 10**

Small businesses tell the Office of the National Ombudsman and the RegFair Boards that some agency staff that perform inspections or compliance audits are not well-trained, and sometimes are not familiar with the industries they inspect, much less the operations of those industries. (*See 2000 Enforcement and Compliance Issues.*)

#### *Example:*

Mr. Joe Ready, president of Advanced Custom Cabinets in Brentwood, New Hampshire, testified about an enforcement action by OSHA. The inspector required his small business to install a \$54,000 dust collection system that Mr. Ready felt was completely unnecessary. Mr. Ready stated his company has an excellent reputation in his industry and that his insurers found no deficiencies with his facility or work practices. He also took issue with the attitude of the OSHA inspector. According to Mr. Ready, the agent conceded that he had no experience with woodworking or a woodworking shop at the start of the inspection and yet he required Mr. Ready to install a specific and expensive dust collection unit. According to Mr. Ready's testimony, other woodworking shops in his area are not required to have this system in place.

## 2000 Enforcement and Compliance Issues

For this year's report, there are three major enforcement and compliance issues that have arisen from the small business feedback received by the Office of the National Ombudsman.

1. Too frequently, agencies do not accurately estimate the impact of new regulations and regulatory actions on small businesses, which results in unnecessary and unintended business costs and restrictions.
2. Agencies can do more to involve small businesses in agency actions that have enforcement and compliance impacts.
3. There is a significant need to improve the training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement and compliance activities.

### Case Studies

1. *Too frequently, agencies do not accurately estimate the impact of new regulations and regulatory actions on small businesses, which results in unnecessary and unintended business costs and restrictions.*

Company 873<sup>2</sup> is a small home health care business in New England that provides in-home care to homebound seniors and people with disabilities. The company was recently notified by HCFA that it would have to implement a new data gathering and electronic reporting system called Outcome and Assessment Information Set (OASIS) by the Health Care Financing Administration (HCFA). Among other things the system is designed to track the appropriateness of care and the normal home health care costs associated with persons with certain ailments. The system is supposed to replace existing data gathering and reporting mechanisms and is expected to ultimately result in improved health care and lower costs for HCFA and home health care providers.

Company 873 is one of a number of small businesses that have either commented or testified that the costs of converting to OASIS and operating it were significantly higher than predicted by HCFA. Prior to putting the rule into effect, HCFA asked University of Colorado researchers to study the cost of conversion to and the operation of OASIS. The study resulted in an estimated cost of \$2,400 to convert to OASIS per home health care agency. The study also concluded that the ongoing costs of operating OASIS would be lower than the data processes it was replacing.

Company 873 experienced costs of conversion that were several times greater than the estimate given by the University of Colorado and adopted by HCFA. The impact of the disparity between estimated and actual costs was heightened for the company because it operates under a cost reimbursement system with HCFA. In other words, it is not entitled to make a profit that might have otherwise been used to pay the additional expenses it incurred in converting to OASIS.

HCFA reviewed and responded to Company 873 and indicated that the agency was working to address the cost concerns, in light of the feedback it was getting. HCFA is working to increase the level of reimbursement for home health agencies to address the negative economic impact of converting to OASIS.

---

<sup>2</sup> Small businesses owners identified by a company number did not elect to disclose their identity publicly and so they are referred to by their RegFair comment tracking numbers.

Similar to Company 873, J.F. O'Neill Packing Co. (O'Neill) experienced economic losses that were not accurately accounted for by a regulatory action of the Department of Agriculture (USDA). O'Neill is a small family owned business in Omaha, Nebraska. It is one of a very few slaughter and fabricating plants in the U.S. certified by the European Union (E.U.) for export. O'Neill contracted with other exporters to the European Union to use the facility along with their own products for export. O'Neill's business was growing and prospering, as were its buyers in the E.U. and fellow contractors using the O'Neill facility. The company worked to ensure its product complied with E.U. rules concerning the use of hormones in cattle. The company worked with the USDA to be permitted to export its product to the E.U. for several years. Part of the export process required the USDA to analyze and certify to the E.U. that the product being exported was consistent with E.U. food health standards.

In mid-July 1999, without prior notification to O'Neill or other small businesses, the USDA suspended the E.U. beef export program. This action effectively shut down O'Neill. The company is now a small fraction of its former size, with correspondingly smaller revenues. Prior to the suspension, the USDA had been working with the industry to establish better testing and auditing procedures to improve overall compliance with E.U. standards. By not involving the industry in its action to suspend the program, the USDA significantly increased the negative impact of its decision. Once the company's animals are slaughtered, time is of the essence. Since the industry was not consulted on the decision and O'Neill was not given any advance notice, the company suffered a near bankrupting event—its cattle slaughtered with the intended market eliminated.

The USDA responded after it had suspended the certification program. The agency said that it had begun working with the industry to develop production controls that would sufficiently assure the agency that the meat it was certifying as hormone free, actually was. The agency did not address whether it had taken any steps to notify O'Neill, prior to suspending its meat certification, and relied on a letter to four trade associations to inform the industry. Later, the agency directly notified O'Neill about its efforts to resume the certification program.

In both situations, better agency discernment of the impact of its actions on small businesses, could have allowed the agency to carry out its legitimate regulatory mission, while mitigating the impact of its actions on small businesses. Relying on a study that was devised without the expertise of affected small businesses, or taking action without first consulting and notifying affected stakeholders, greatly increases the chances that agency actions will have unnecessary, unintended and damaging consequences for small businesses.

Among other solutions, agency adoption of Recommendation 1 contained in this Annual Report would greatly have improved agency estimates of the impact of their actions on small businesses. To the extent that agencies use cooperative pilot programs, the Office of the National Ombudsman and the RegFair Boards believe the Federal government will eliminate this major concern and give credibility to the agency's regulatory role. Private industry makes extensive use of pilot projects to determine the viability of new products and markets with great success.

## *2. Agencies can do more to involve small businesses in agency actions that have enforcement and compliance impacts.*

Companies 134 and 803 are, respectively, Southern state and Heartland state small home health care agencies. The companies commented on HCFA implementation of the Balanced Budget Act of 1997 (BBA '97). The small businesses believe that HCFA's interpretation and implementation of the Act was unduly harmful to the industry generally and to their own companies in particular.



One of the requirements of BBA '97 was the institution of a surety bond requirement. The bond is required to insure that HCFA can recover payments that home health care agencies have billed incorrectly, improperly, or fraudulently. Congress set minimal bond requirements, but left the details for HCFA to define. HCFA implemented a bond requirement that set a minimum bond amount as the higher of \$50,000 or 15 percent of payments. HCFA also detailed a number of requirements concerning the number of bonds and the required indemnification.

Company 134 was instructed to obtain a surety bond by HCFA's contractor. The small business sought the required bond from several bonding companies. As a result of the design of HCFA's cost reimbursement system the company did not have enough collateral to pledge for the bond. The small business owner would have to pledge personal assets and even then could not find a company that was willing to underwrite the bond required by HCFA.

Company 803 was also instructed to obtain a surety bond for nearly \$350,000. The company has been in business for many years and had an exemplary compliance history. The company commented that HCFA's rule did not consider past compliance and treated it as though it was a new HCFA health care provider. The company invested significant effort and funds over the years to maintain its excellent compliance record and didn't believe it was appropriate to be lumped in with less scrupulous companies.

HCFA responded to the feedback it received from Congress, the industry and RegFair and delayed the implementation of the bond requirement several times. The agency heard from the bond companies and rewrote technical provisions in the rule to make bonding economically feasible for the bond companies. It also modified the bond requirement to reduce the overall cost for small businesses.

Partnering with the affected industries from the inception of this regulatory action would have dramatically changed the agency's analysis and conclusions with regard to the impact of the requirements. A Government and private sector partnership would likely speed up the implementation of the new policy, reduce the need for extensive agency modifications to the requirement, and most importantly, minimize any negative impact the new requirement might have on the industry. Recommendations 1, 6 and 9 in this year's Annual Report, are geared toward increasing the level of cooperation and involvement between small businesses and agencies and thereby reduce the small business regulatory burden. Recommendation 1 addresses the impact of enforcement and compliance on small businesses, Recommendation 6 addresses the use of voluntary standards verses mandatory regulations, and Recommendation 9 seeks to reduce the duplication of compliance requirements. The recommendations provide a good start for agencies in building better communication, understanding and solutions that benefit small businesses while still achieving public policy goals.

*3. There is a need to improve training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement and compliance activities.*

Mechoshade is a small business in New York, New York that sells window coverings. The company has customers throughout the country and had sold merchandise to some buyers in California. The buyers contacted the company because the product was delivered with a few dirt marks. The company shipped the buyers some dry cleaning fluid by an air express carrier. The company packed the fluid into two jars and wrapped the jars in packing material inside a cardboard box.

The jars were discovered after they had been flown to California because the package had leaked. The Federal Aviation Administration (FAA) considered the fluid a health and safety hazard. The FAA issued a multitude of charges against the company for its single action. The company was unaware of any restriction and regularly uses the chemical in its plant. The company quickly informed the FAA that it would fully comply in the future and was apologetic for its violation.

FAA and the company agreed that no harm was caused to the passengers and crew of the plane, but the FAA demanded more than a warning. After the company contacted the Office of the National Ombudsman, the agency took the company's size, past compliance and likely future compliance into consideration when it reduced the penalties.

The FAA did not address the justification for the number of charges that it brought against the company. With civil regulatory enforcement and compliance activities, agency staffs yield significant discretionary power in the number and severity of violations that they may pursue against small businesses. Faced with maximum penalties on numerous violations for individual acts, small businesses frequently feel compelled to settle with agencies.

Company 824 presents a different perspective on the importance of proper use of agency discretion. Company 824 is a small Western state business that operates a laboratory facility regulated by the Food and Drug Administration (FDA). An agency employee, who was very professional and polite, inspected the company in 1999. The company spent significant resources preparing for and working with the inspector. Company 824's particular issue concerned paperwork requirements. The inspector was working from the same regulation that the company had been working from. The regulation itself was written in a way to reduce the heavier burden that smaller laboratories face in complying with record keeping requirements.

The inspector ordered the company to change its record keeping system in a way that would increase costs without, as the company believes, an increase in product quality or safety. The small business believes that the record keeping system implemented at the behest of the inspector might have to be changed again should a different inspector visit in the future. The company believes its previous system was in full compliance and that the inspectors should be better trained to recognize systems that achieve the goal sought by the underlying regulation. The business also believes that more safeguards should be in place to allow small businesses to contest discretionary decisions of agency staff. After the company contacted the Office of the National Ombudsman, the FDA responded that it does have specific protocols in place to address these discretionary staff decisions and recommended that the small business contact the appropriate office to seek a resolution.

Agency staff exercise tremendous power when they undertake enforcement and compliance activities. With individual power comes the opportunity for mistakes. While training alone does not guarantee the proper use of discretion, training with regular oversight and reporting mechanisms can help insure that personnel are properly carrying out the intent and requirements of regulations. The impact of improper agency discretion is one of the chief reasons for the Office of the National Ombudsman's Recommendation 10, contained in this Annual Report. Thorough training and excellent oversight would greatly reduce the improper use of discretion during enforcement and compliance activities. Agency oversight practices might also provide small businesses with better vehicles to voice their concerns.

# **The State of Federal Agency Regulatory Enforcement Fairness for Small Businesses**

Many Federal agencies have instituted regulatory enforcement and compliance reforms based on the evaluations and recommendations from the National Ombudsman's first and second Annual Reports to Congress on regulatory fairness.

A major goal and continuing theme of the RegFair Program in its third year has been to encourage Federal agencies to create friendlier, non-punitive regulatory environment for the Nation's 25 million small businesses. The agency evaluations and ratings, required under the statute and included in each of the National Ombudsman's Annual Reports, highlight areas where agencies may make additional reforms for small businesses.

The 2000 Report to Congress continues the evaluations and ratings of previous years and develops some additional areas of evaluation. These areas are:

- The quality, thoroughness and timeliness of agencies' responses to small business comments;
- Agency responsiveness to specific regulatory fairness questions based on individual small business comments;
- Agency implementation of the recommendations contained in the National Ombudsman's 1999 Report to Congress; and
- Agency response and participation in the ten RegFair hearings held in 1999.

The Office of the National Ombudsman also requested each Inspector General to establish a protocol under which appropriate small business comments may be referred to the Inspector General in a manner that protects the identity of the small business, as required by SBREFA. Included in this report is an evaluation and rating of the Inspectors' General responses.

## **Evaluating Agency Enforcement and Compliance Activities**

### *Learning from the Enforcement and Compliance Experiences of Small Businesses*

Small business owners file comments with RegFair for two chief reasons. First, small businesses want timely responses to their concerns from high-level, independent agency officials who are in positions to review and address their concerns. Second, small businesses work with the Office of the National Ombudsman and RegFair Boards to improve the Federal regulatory enforcement and compliance environment.

The National Ombudsman developed internal and external mechanisms that maximize the impact that each small business comment has on the regulatory environment. Each comment becomes a case study with the potential for significant national impact.

By including a series of regulatory fairness questions, like those in the following sample list, as the focus of small business comments sent to agencies, the Office of the National Ombudsman systematically asks agencies to analyze how effective they are at consistently ensuring a fair regulatory environment. Responding to the questions requires agencies to study how their own policies and procedures either foster or deter a fair regulatory environment for small businesses. In instances of substantiated regulatory enforcement concerns, agencies describe solutions they will use to eliminate or greatly reduce the problems within their agencies or processes by which they may better monitor their own performance. The personnel or policy changes that are brought about by the comments of individual small business owners have

significant positive impacts on the overall enforcement and compliance environment. Individual small business comments in effect help hundreds and thousands of other small business owners, many of whom have not participated in the RegFair.

The National Ombudsman and the RegFair Boards use the testimony and written comments to identify broad enforcement and compliance issues. The enforcement and compliance issues are reflected in the National Ombudsman's Annual Recommendations, agency evaluations, ratings, and the major enforcement and compliance issues.

In the 1999 Report to Congress, the National Ombudsman sought to enhance and expand the evaluations conducted on specific Federal agency enforcement and compliance activity, based on comments received directly from small businesses. Two new evaluations and ratings were introduced in the 1999 Report. The first evaluated and rated the timeliness of agency responses to small business comments. The second evaluated and rated the overall quality and thoroughness of each response.

Small business owners have told RegFair that their businesses are hurt by the excessive length of time it takes Federal agencies to hear their requests, carry-out regulatory enforcement or compliance activities and review their appeals. Small business owners believe that justice delayed can be justice denied.

The National Ombudsman and the RegFair Boards have also heard from small businesses that agencies set and strictly enforce short deadlines during an enforcement and compliance activity. At the same time, agencies do not comply with their own response time commitments. The RegFair Boards recommended that evaluating agencies based on the timeliness of their responses to small business comments would be a good substitute indicator of an agency's overall timeliness with small businesses and might help sensitize each agency to the impact its deadlines have on small businesses.

The quality and thoroughness of the agency responses are similarly very important to small business owners and the regulatory reform opportunities presented by each small business comment. Small business owners want to know that their comments are being fully considered. To the extent a Federal agency does not respond to a regulatory fairness question presented by a small business there is no documentary evidence that the agency heard, understood, and considered the issue(s) presented.

Thorough and thoughtful agency responses help the National Ombudsman and the RegFair Boards learn more about the enforcement and compliance concerns as well as where potential solutions may lie.

#### *Additional Evaluations for the 2000 Report to Congress*

In the continuing effort to enhance the assessment of Federal agency enforcement and compliance activities, agencies are evaluated and rated in an additional area. The evaluation and rating is on the responsiveness of agencies to the National Ombudsman's regulatory fairness questions.

Starting in mid-1998 and continuing through 1999, the National Ombudsman asked Federal agencies to review and respond to small business comments as well as a series of regulatory fairness process questions.

The questions are designed to elicit agency consideration of basic process issues that the National Ombudsman and RegFair Boards believe form the structure of a fair enforcement and compliance environment for small businesses. Small businesses often state that it is not fair for them to be severely penalized for violating a rule of which they were unaware. Indeed, when significant numbers of responsible small business owners are unaware of a rule that impacts their industry, the Federal agency has not effectively communicated and educated small businesses on their regulatory compliance requirements. When an agency's efforts to educate small businesses on a regulatory enforcement requirement are not

successful or extensive enough, agency enforcement activity may be within its authority and yet still not uphold basic regulatory fairness standards.

The National Ombudsman's questions help illustrate to agencies that the issue of regulatory fairness includes, but also goes beyond agency authority to take an enforcement or compliance action. The questions seek to institutionalize regulatory fairness issues within each Federal agency and bring the small business perspective to bear on each enforcement or compliance activity.

A representative sample of the basic process questions follow. These questions are posed in modified forms appropriate for a given comment and the level of identity disclosure the small business owner elects. (Small business owners may elect to disclose their company's identities to agencies so that the agencies may review the actual circumstances of the enforcement or compliance activities and how their regulatory fairness standards were applied to the companies.)

Sample List of Regulatory Fairness Questions:

- (i) why and how the enforcement or compliance action was taken;
- (ii) whether and how small businesses were notified of applicable requirement(s);
- (iii) whether and how the agency considered the economic impact of the requirement on small businesses;
- (iv) whether the small business had notice of the enforcement or compliance action and was given adequate opportunities to correct the cause(s) of the violation(s);
- (v) how was the enforcement or compliance action determined;
- (vi) whether the small business' compliance history was factored into the determination;
- (vii) whether and how the agency considers the economic impact of the restriction, denial, penalty, recoupment, or repayment terms on the small business;
- (viii) whether the agency considered the small business' mitigating circumstances;
- (ix) whether the agency's policies and procedures were followed;
- (x) whether and how the agency's regional and program offices were responsive to the small business;
- (xi) what policies and procedures does the agency have in place to: (a) ensure that excessive enforcement and compliance activities do not take place; and (b) monitor internal compliance with its policies and procedures, as well as the responsiveness to small businesses of the agency's offices; and
- (xii) why the agency believes the specific enforcement or compliance action reflects the requirements of SBREFA; or whether the agency should reconsider its enforcement or compliance action, in this and in future matters, in light of the small business' comments and the requirements of SBREFA.

*Quality, Thoroughness, and Timeliness of Agency Responses*

Evaluative Table 1<sup>3</sup>

<i>Adequacy and Thoroughness of Agency Responses to Small Business Comments in 1999</i>	
<i>Agency</i>	<i>Response to Small Business Comment</i>
Department of Labor	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Deposit Insurance Corporation	●
Federal Energy Regulatory Commission	●
Immigration and Naturalization Service	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Social Security Administration	●
Customs (Treasury)	◐
Department of Transportation	◐
Food and Drug Administration (HHS)	◐
Housing and Urban Development	◐
Internal Revenue Service (Treasury)	◐
Department of Agriculture	⊙
Health Care Financing Administration	⊙
Key: ● = Excellent; ◐ = Good; ⊙ = Average; ○ = Unsatisfactory	

Rating Criteria for Evaluative Table 1

● Excellent	All of the small business' issues were fully addressed. The response demonstrates a thorough and reflective review of the issues or questions. Courses of action are discussed for any substantiated concerns.
◐ Good	The response addressed most of the small business' issues. The response demonstrates the agency gave the issues or questions serious consideration during the agency review. Where applicable, agency reaction to substantiated small business or RegFair concerns is not addressed in the response.
⊙ Average	The response addressed most of the small business' issues. The issues or questions that were addressed in the agency response were answered in a moderately complete fashion.
○ Unsatisfactory	The response did not address a significant number of the small business' issues. The issues or questions that were addressed in the agency response were answered in a very minimal fashion.

<sup>3</sup> The number of agencies listed above reflects agencies that have provided a final response to small business comments reviewed in 1999. There are additional comments on other agencies for which RegFair has not received adequate final agency responses. Those comments were not evaluated at the time this report was printed. Evaluative Table 3 lists additional agencies because RegFair has received initial responses on current comments from a greater number of agencies.

Evaluative Table 2

<i>Adequacy and Thoroughness of Agency Response to the National Ombudsman's Regulatory Fairness Questions for 1999</i>	
<i>Agency</i>	<i>Response to National Ombudsman's Questions</i>
Department of Transportation	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Energy Regulatory Commission	●
Housing and Urban Development	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Customs (Treasury)	◐
Department of Agriculture	◐
Department of Labor	◐
Federal Deposit Insurance Corporation	◐
Food and Drug Administration (HHS)	◐
Health Care Financing Administration (HHS)	◐
Internal Revenue Service (Treasury)	◐
Social Security Administration	◐
Immigration & Naturalization Service	◎
Key: ● = Excellent; ◐ = Good; ◎ = Average; ○ = Unsatisfactory	

Rating Criteria for Evaluative Table 2

● Excellent	All of the National Ombudsman's questions were fully addressed. The response demonstrates a thorough and reflective review of the issues or questions. Courses of action are discussed for any substantiated concerns.
◐ Good	The response addressed most of the National Ombudsman's questions. The response demonstrates the agency gave the issues or questions serious consideration during the agency review. Where applicable, agency reaction to substantiated small business or RegFair concerns is not addressed in the response.
◎ Average	The response addressed most of the National Ombudsman's questions. The issues or questions that were addressed in the agency response were answered in a moderately complete fashion.
○ Unsatisfactory	The response did not address a significant number of the National Ombudsman's questions. The issues or questions that were addressed in the agency response were answered in a very minimal fashion.

Evaluative Table 3

<i>Timeliness of Initial Agency Responses Since RegFair Inception</i>			
<i>Agency</i>	<i>Overall Weighted Rating<sup>4</sup></i>	<i>2000 Rating</i>	<i>1999 Rating</i>
Commodities Future Trading Commission	●	NC	●
Customs (Treasury)	●	●	●
Federal Deposit Insurance Corporation	●	NC	●
Federal Energy Regulatory Commission	●	●	⊙
National Labor Relations Board	●	●	NC
Occupational Safety & Health Administration	●	NC	●
Pension Benefit Guaranty Corporation	●	●	NC
Securities and Exchange Commission	●	NC	● <sup>5</sup>
Small Business Administration	●	●	●
Equal Employment Opportunity Commission	●	●	●
Internal Revenue Service (Treasury)	●	⊙	●
Department of Agriculture	⊙	○	●
Department of Transportation	⊙	○	⊙
Environmental Protection Agency	⊙	●	⊙
Department of Defense	○	NC	●
Department of Justice	○	NC	○
Department of Labor	○	○	●
Federal Communication Commission	○	○	⊙
Food and Drug Administration	○	○	⊙
Health Care Financing Administration (HHS)	○	○	NC
Housing and Urban Development	○	○	●
Immigration and Naturalization Service (Justice)	○	○	●
Social Security Administration	○	NC	○
Key: ● = Excellent; ● = Good; ⊙ = Average; ○ = Unsatisfactory; NC = No Comments			

Rating Criteria for Evaluative Table 3

● Excellent	The agency's average initial written response time to small business comments was within 45 days of RegFair transmitting comments to the agency for its review and response.
● Good	The agency's average initial written response time to small business comments was between 46 and 60 days of RegFair transmitting comments to the agency for its review and response.
⊙ Average	The agency's average initial written response time to small business comments was within between 61 and 90 days of RegFair transmitting comments to the agency for its review and response.
○ Unsatisfactory	The agency's average initial written response time to small business comments was greater than 90 days of RegFair transmitting comments to the agency for its review and response.
NC No Comments	There were no small business comments sent to agency during the rating period.

<sup>4</sup> Reflects the average agency initial response time since 1997.

<sup>5</sup> Reflects correction to 1999 Report to Congress.



## Agency Responses to the 1999 Recommendations

This section of the 2000 Report evaluates and rates agency responses to the first five recommendations contained in the National Ombudsman's 1999 Report to Congress. All recommendations are ongoing and are intended to create a friendlier, fairer, regulatory enforcement and compliance environment for the Nation's 25 million small businesses.

The National Ombudsman's 1998 and 1999 Annual Reports to Congress on Regulatory Fairness each presented ten recommendations for Federal agencies to implement. The recommendations are intended as a helpful guide for agencies undertaking regulatory enforcement and compliance activities with respect to small businesses. The recommendations were derived from small business comments, RegFair hearing testimony, and the experiences of RegFair Board Members as small business owners and as 1995 White House Conference Delegates. If fully implemented, the recommendations will help agencies improve the regulatory enforcement environment.

In April 1999, RegFair Board Members and agencies were asked to provide input on the rating criteria to be used to evaluate agencies for the National Ombudsman's 2000 Report to Congress. Specifically, the Acting National Ombudsman requested the Boards and the agencies to provide ideas, comments and suggestions for the criteria by which agency efforts to implement the five major 1999 Recommendations would be evaluated.

Those responses were reviewed and, where appropriate, incorporated into draft evaluation criteria. The final evaluation criteria used to evaluate agency implementation of the five major recommendations were distributed, and agencies were requested to provide a status report on their efforts to implement the recommendations.

Initial agency responses were reviewed and, in some cases, agencies were asked to clarify their responses on specific recommendations. The complete responses were reviewed to evaluate steps agencies have taken to implement the recommendations and improve the regulatory enforcement environment for small business.

Agency efforts to achieve the same ends sought in the recommendations, but by different means, were considered in evaluating and rating the agency's performance. Also considered were substantiated instances of enforcement or compliance activity that appeared inconsistent with agency responses to the recommendations.

In the evaluation, all agency responses, including responses to the draft of the 2000 Report to Congress were used to rate agencies. Evaluative Table 4 shows that five agencies achieved a rating of *Good* or *Excellent* on all five recommendations. Those agencies are the Equal Employment Opportunity Commission, the Federal Trade Commission, the Occupational Safety and Health Administration, the Pension Benefit Guarantee Corporation and the Department of Transportation.

Three agencies received an *Unsatisfactory* rating for all five recommendations. The Department of Defense, the General Services Administration, and the Department of State received an *Unsatisfactory* rating for all five recommendations because they either did not supply RegFair with the status of their implementation or they did not implement the recommendations.

### *Applicability of SBREFA*

As stated in the National Ombudsman's 1999 Report to Congress, Section 222 of SBREFA is part of "Subtitle B--Regulatory Enforcement Reforms." Section 221 contains the "definitions" applicable to Subtitle B. Section 221 adopts the Freedom of Information Act (FOIA) definition of "agency." That

definition states that agency means “each authority of the Government of the United States, whether or not it is within or subject to review by another agency....” (5 U.S.C. §551). Accordingly, the National Ombudsman, with advice from the regional RegFair Boards, has concluded that Section 222 applies whenever a Federal agency, as defined above, exercises regulatory enforcement or compliance authority with respect to a small business concern (15 U.S.C. Sec 657 (b)(2)(B)).

In determining which agencies are covered under the Regulatory Fairness Program, the National Ombudsman is strictly guided by the statute. In Section 221 of SBREFA, Congress adopted FOIA’s broad definition of “agency,” to define the agencies covered under Section 222 of SBREFA. Moreover, Section 222 addresses “each agency with regulatory authority over small businesses.” Accordingly, the Regulatory Fairness Program has rejected the position of some agencies that they are not covered by SBREFA because they are not a regulatory agency. In other words, as required under Sections 221 and 222 of SBREFA, an agency can exercise “regulatory authority over small businesses” without being a regulatory agency.

Two agencies, the Department of Defense and the General Services Administration, despite the broad statutory definition, correspondence, discussions with the National Ombudsman, and a letter from the Subcommittee on Regulatory Reform of the House Small Business Committee, have taken the position that Section 222 of SBREFA does not apply to them. (*See the National Ombudsman’s 1999 Report to Congress, at 15.*)

In Section 222 of SBREFA, Congress also addressed “actions by agency employees conducting compliance or enforcement activities with respect to the small business concern.” As stated in the 1999 National Ombudsman’s Report to Congress:

*In keeping with Congressional intent, as manifested by the statutory language, RegFair has not limited small business concerns to fines and penalties. The National Ombudsman believes that Congress did not intend such a narrow scope, or it would have used the words “fines” and “penalties.” The Regulatory Fairness Boards and the National Ombudsman believe this is significant because, as seen in the feedback received by RegFair through written comments, testimony, and RegFair Board contact, small businesses have significant regulatory enforcement and compliance concerns which are not restricted to fines and penalties. (Id. At page 7.)*

Evaluative Table 4

<i>Rating of Agency Responses to RegFair Recommendations</i>					
<i>Agency</i>	<i>Rec. 1 Protocol</i>	<i>Rec. 2 Expedited Avenue</i>	<i>Rec. 3 Collect Data</i>	<i>Rec. 4 Independent Official</i>	<i>Rec. 5 Training</i>
Department of Agriculture	⊙	●	⊙	○ <sup>6</sup>	▮
Department of Commerce	⊙	●	⊙	●	●
Commodity Futures Trading Commission	⊙	⊙	⊙	●	▮
Consumer Product Safety Commission	▮	⊙	⊙	●	▮
Customs Service (Treasury)	●	●	▮	●	●
Department of Defense	○	○	○	○	○
Department of Education	⊙	▮	⊙	●	○
Environmental Protection Agency	⊙	⊙	⊙	●	●
Equal Employment Opportunity Commission	●	●	●	●	●
Farm Credit Administration	⊙	⊙	⊙	●	●
Federal Communications Commission	▮	▮	▮	●	●
Federal Deposit Insurance Corp.	▮	▮	⊙	●	●
Federal Energy Regulatory Commission (Energy)	▮	⊙	⊙	●	▮
Federal Trade Commission	●	●	●	●	●
Food & Drug Administration (HHS)	⊙	▮	▮	●	▮
General Services Administration	○	○	○	○	○
Health Care Financing Administration (HHS)	▮	⊙	▮	●	▮
Department of Housing and Urban Development	▮	●	⊙	●	●
Immigration and Naturalization Service (Justice)	⊙	○	○	●	○
Internal Revenue Service (Treasury)	▮	▮	○	●	▮
Department of Interior	▮	⊙	⊙	●	▮
Department of Justice	▮	▮	⊙	●	▮
Department of Labor	⊙	⊙	⊙	●	●
National Aeronautics and Space Administration	▮	●	⊙	●	●
National Labor Relations Board	▮	⊙	⊙	●	▮
Occupational Safety & Health Administration (Labor)	▮	●	▮	●	▮
Pension Benefit Guarantee Corporation	●	▮	●	●	▮
Securities and Exchange Commission	▮	●	▮	●	●
Small Business Administration	▮	●	▮	●	▮
Social Security Administration	○	○	○	●	○
Department of State	○	○	○	○	○
Tennessee Valley Authority	⊙	⊙	⊙	●	▮
Department of Transportation	▮	▮	●	●	●
Department of Veterans Affairs	⊙	⊙	⊙	●	●
Key: ● = Excellent; ▮ = Good; ⊙ = Average; ○ = Unsatisfactory; NR = Not Rated					

<sup>6</sup> The USDA committed that it would provide independent reviews of each small business comment sent to it by the Office of the National Ombudsman. Unfortunately, USDA has not fully implemented its commitment as the Office of the National Ombudsman received a USDA response from an agency official who is directly involved in the underlying enforcement and compliance activity.

## Rating Criteria for Evaluative Table 4

### *Issue 1:*

Small business owners believe that enforcement or compliance activity can be arbitrary, often depending on the training and/or attitude of the agent responsible for performing the activity.

### *Recommendation 1:*

Develop a regulatory fairness protocol for Federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a check list for the following:

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstances the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

### *Evaluation Criteria for Recommendation 1:*

● Excellent	<p>The agency indicates it has developed and is enforcing a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business. According to the agency, the protocol is frequently and clearly communicated to staff through internal newsletters, meetings with supervisors, training or other clearly designated avenues. The protocol includes all five of the suggested check list items shown above.</p> <p>Staff, who have small business enforcement or compliance responsibilities, are partly rated based on their proper use and application of the regulatory fairness protocol. The agency shares the protocol with individual small businesses at the outset of each enforcement or compliance activity as well as the results of the protocol's application to each small business. The agency has specifically defined how small businesses will be identified and at what points during an enforcement or compliance activity the protocol will be applied.</p>
◐ Good	<p>The agency indicates it has developed a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business, and that the protocol has been clearly communicated to that staff. The protocol includes at least three of the five suggested check list items shown above, in some form. The agency shares the protocol with individual small businesses at the outset of each enforcement or compliance activity.</p>
⊙ Average	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"><li>• That it has developed a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business, but offers no further information on the protocol or how it is communicated to staff; or</li><li>• The agency indicates that although it does not have a protocol in place, it will develop and institute a protocol within a specified time period.</li></ul> <p>According to the agency, the protocol includes one of the five suggested items shown above.</p>

○ Unsatisfactory	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information;</li> <li>the agency indicated it does not have a protocol and offers no indication of whether or not a protocol was being planned or developed; or</li> <li>the agency states that it has developed a protocol, but gives no further information.</li> </ul>
---------------------	---

*Issue 2:*

The economic viability of small businesses may be threatened by agency enforcement or compliance activities.

*Recommendation 2:*

Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

*Evaluation Criteria for Recommendation 2:*

● Excellent	<p>The agency's response indicates it has established an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability.</p> <p>This avenue has the authority to provide for alternative payment arrangements, alternative enforcement or compliance actions, or other arrangements. According to the agency, it has made extensive use of appropriate media such as newsletters, its web site, direct mail and face-to-face contacts with small businesses, trade associations, and other interested parties to inform the small business community of the availability of this avenue.</p>
◐ Good	<p>The agency's response indicates it has established an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability. The avenue has some authority to examine and change the agency's enforcement or compliance action, or provide for alternative arrangements.</p>
◉ Average	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>The agency will establish within a specified time period an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability; or</li> <li>It has established an avenue with limited authority to examine and change agency enforcement or compliance action, or provide for alternative arrangements. According to the agency, it has tried to inform small businesses of the availability of this avenue through instruments such as published materials, newsletters, its web site, and direct mail to small businesses, trade associations, and other interested parties.</li> </ul>

○ Unsatisfactory	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information;</li> <li>the agency does not have such an avenue and offered no information on whether an avenue was being planned or developed; or</li> <li>the agency does not have or plan to establish an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability.</li> </ul>
---------------------	---

### *Issue 3:*

Small business owners believe that Federal agencies enforcement and compliance activities are unfair to small businesses compared to large corporations, and that agencies sometimes “target” small businesses because they do not have in-house legal counsel.

### *Recommendation 3:*

Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;
- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Administrative, final agency, and judicial appeals and the cost of such activities; and
- Use and success of informal and formal appeal channels for small versus large businesses.

### *Evaluation Criteria for Recommendation 3:*

● Excellent	<p>The agency's response to recommendation 3 indicates that it collects and publicizes data on its enforcement and compliance activities annually, and that it uses the information gathered to examine and improve its fairness to small businesses at all stages of enforcement and compliance activities. According to the agency, it also uses that information to improve small businesses' understanding of its enforcement and compliance activities through the use of newsletters, web sites, direct mail and face-to-face contacts with small businesses, trade associations, and other small business representatives and agents.</p>
◐ Good	<p>The agency collects and publicizes data on its enforcement and compliance activities occasionally. The agency plans to begin examining data for use in improving its fairness to small businesses or to help improve small businesses' understanding of its enforcement and compliance activities. The latter is communicated to the small business community in multiple ways.</p>

<input checked="" type="radio"/> Average	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>• The agency collects and publicizes data on its enforcement and compliance activities but did not indicate plans to examine it for information on fairness or small businesses' understanding; or</li> <li>• The agency does not collect data, but gave specific plans to begin doing so. It also plans to begin examining data for information on fairness and small businesses' understanding of its enforcement and compliance activities, and to communicate this to the small business community.</li> </ul>
<input type="radio"/> Unsatisfactory	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>• the agency did not respond to the recommendation, or responded to the recommendation by offering no relevant information; or</li> <li>• the agency does not collect data on its enforcement and compliance activities and offered no indication of plans to begin collecting such information.</li> </ul>

#### *Issue 4:*

Small businesses want their issues raised with government officials who are able to independently address and answer small business concerns, and guard against retaliation by ensuring that the reviewing official does not have a direct conflict of interest. Review at a high level means the agency can measure its effectiveness at implementing the principles of SBREFA, as well as whether its own internal policies to protect small business are effective. They want review officials who are able to independently address and answer small business concerns, to the point of changing agency policy for all small businesses, if appropriate.

#### *Recommendation 4:*

Agencies heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

#### *Evaluation Criteria for Recommendation 4<sup>7</sup>:*

<input checked="" type="radio"/> Excellent	<p>For each RegFair request to review and respond to a small business comment, the agency designates a representative who is independent of the enforcement or compliance action commented on by the small business.</p>
<input type="radio"/> Unsatisfactory	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"> <li>• The agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information;</li> <li>• The agency has not designated and has no plans to designate RegFair Program representatives who are independent of enforcement or compliance activities and offers no information on whether this may be considered in the future; or</li> <li>• The designated RegFair representatives are not independent of enforcement or compliance activities.</li> </ul>

#### *Issue 5:*

Small business owners are concerned that agency enforcement and compliance personnel are not familiar with the application of the agency's rules and regulations to small businesses, and do not always consider the principles of SBREFA when considering how to apply those rules.

#### *Recommendation 5:*

<sup>7</sup> On Recommendations 4 and 5, agencies have fewer possible ratings due to the nature of the recommendations.

Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program. The training should sensitize employees to the unique needs of small business.

*Evaluation Criteria for Recommendation 5:*

● Excellent	The agency's response provided details about formal and periodic training for all enforcement and compliance staff that work with small businesses on the regulatory fairness rights of small businesses, including RegFair. The training is designed to sensitize employees to the unique needs of small business.
◐ Good	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"><li>• The agency provides training on the regulatory fairness rights of small businesses, including RegFair, but provides no additional information about the training or whether it sensitizes employees to the unique needs of small business; or</li><li>• The agency plans to institute formal and periodic training for enforcement and compliance staff that work with small business on the regulatory fairness rights of small businesses, including RegFair by a specific date. The training will focus on sensitizing employees to the unique needs of small business.</li></ul>
○ Unsatisfactory	<p>The agency's response indicates one of the following:</p> <ul style="list-style-type: none"><li>• the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; or</li><li>• the agency did not indicate whether it has formal training for enforcement and compliance staff on the regulatory fairness rights of small businesses and does not indicate plans to institute such training.</li></ul>

*Section Summary*

SBREFA was intended to foster a regulatory enforcement environment that is sensitive to the unique needs and concerns of small business. The Act was also intended to change agency practices and culture so that those needs and concerns are taken into account by agencies in their regulatory enforcement and compliance activities, and to foster positive dialogue and partnership between Federal agencies and small businesses.

Overall, it appears that most agencies are making efforts to apply the principles of SBREFA to the enforcement and compliance activities they undertake with regard to small businesses. The majority of agencies have designated high-level, independent officials to review small business comments. Most agencies have or are instituting formal and periodic training on SBREFA and the regulatory rights of small businesses for personnel that have enforcement or compliance responsibility with regard to small business.

The evaluations are helpful in measuring agency inclinations toward small businesses. However, the National Ombudsman has no immediate method of determining the extent to which agencies are enacting the efforts and programs described in their written responses to the recommendations. The Office of the National Ombudsman currently evaluates whether agency personnel are carrying out these policies in the field, by matching agency responses with small business comments received, through testimony offered in RegFair hearings, and from the daily experiences of RegFair Board Members. For further feedback on agency field practices refer to the RegFair Boards Perspectives section and Small Business Perspectives sections, which illustrate matters raised by small businesses at the RegFair hearings.



## **Referrals to Federal Agency Inspectors General**

SBREFA requires the National Ombudsman to establish the means to refer, in appropriate circumstances, comments from small businesses to agency Inspectors General. Specifically, the National Ombudsman is directed to develop a "...means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978. (5 U.S.C. App.)" (15 U.S.C. § 657).

As reported in the 1999 Report to Congress, the Office of the National Ombudsman established a protocol with each agency's Inspector General, to refer enforcement or compliance activities that have the appearance of impropriety on the part of agency personnel.

Of the 37 Federal agencies identified under Section 222 of the Act, 30 agencies were identified as having an Inspector General. Some Inspectors General are responsible for more than one agency. For example, the Inspector General of the U.S. Department of the Treasury is responsible for the Department of Treasury and for the U.S. Customs Service.

Agencies were contacted by the Office of the National Ombudsman to ensure that the identity of the small business, referred by RegFair to an agency Inspector General, is treated with the level of confidentiality provided other employee complaints received by the Inspectors General.

As Evaluation Table 5 illustrates, RegFair has reached agreement with all 30 agency Inspectors General that they will seek to protect the identity of the individuals and small business concerns making comments on a confidential basis, to the same extent as employee identities are protected under the Inspector General Act.

Evaluation Table 5

<i>Cooperation of Inspectors General in Establishing Confidential Small Business Referrals</i>	
<i>Agency</i>	<i>Response</i>
Agriculture	●
Commerce	●
Commodity Futures Trading Commission	●
Consumer Product Safety Commission	●
Defense	●
Education	●
Energy	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Farm Credit Administration	●
Federal Communications Commission	●
Federal Deposit Insurance Corp.	●
Federal Trade Commission	●
General Services Administration	●
Health & Human Services	●
Housing and Urban Development	●
Interior	●
Justice	●
Labor	●
National Aeronautics and Space Administration	●
National Labor Relations Board	●
Pension Benefit Guaranty Corporation	●
Securities and Exchange Commission	●
Small Business Administration	●
Social Security Administration	●
State	●
Tennessee Valley Authority	●
Transportation	●
Treasury	●
Veterans Affairs	●
Key: ● = Satisfactory; ○ = Unsatisfactory	

## **Agency Participation in RegFair Hearings**

Over the last three years, RegFair has convened 30 public hearings nationally, with 22 of the 37 agencies participating in varying degrees. Some agencies have participated at more than one hearing each year. In 1999, 17 agencies presented testimony, a notable increase over prior years. Six agencies had not previously participated in these public forums.

The Office of the National Ombudsman continually strives to improve the quality and value of the public hearings. Beginning with the 2000 public hearings, participants will be provided copies of the National Ombudsman's recommendations. This will help small businesses learn of the progress that has been made on regulatory fairness and further monitor agency implementation of the Recommendations.

In 1999, participation results similar to those in 1998 were achieved. In each of these two years, over 650 individuals attended the hearings, and nearly 150 small business representatives offered testimony. In 1997, approximately 450 individuals attended the hearings, and more than 100 provided testimony on their experience with regulatory enforcement. Transcripts of the proceedings for both 1998 and 1999 are posted on the RegFair web site, which can be accessed from the Small Business Administration's home page, under the topic titled Regulatory Fairness, or directly at [www.sba.gov/regfair](http://www.sba.gov/regfair). Beginning with the 2000 RegFair hearings, we will also post on the RegFair web site, the written testimony submitted to RegFair by small businesses and agencies.

Many agencies have demonstrated their commitment to regulatory fairness for small business by participating in the public hearings. For example, the IRS, OSHA, EPA, SBA and the Department of Transportation deserve recognition for sending agency representatives to hearings at which they were not invited to testify. The agency representatives attended to hear small business comments and answer on-the-spot questions.

Past hearing successes are strengthening RegFair's relationships with SBA's Regional and District Offices. These improved relationships have resulted in a more varied base of small business owners attending the hearings, and have garnered more diverse testimony.

With the exception of the General Services Administration, every agency requested to testify at a 1999 hearing accepted that invitation, submitted written testimony, and came prepared to discuss the agency's implementation of the recommendations.

We commend the exemplary multi-year hearing participation records of the following agencies:

Internal Revenue Service  
Environmental Protection Agency  
Food and Drug Administration  
Department of Transportation

Occupational Safety and Health Administration  
Department of Labor  
Small Business Administration

## *Special Thanks*

We were greatly honored to have Congressional participation at every regional hearing this year. Congress is an essential partner to achieving regulatory fairness for small businesses. The involvement of U.S. Senators and U.S. Representatives at the public hearings helps demonstrate to the small business participants what a truly great partnership they have advocating on their behalf.

Our special thanks goes to the following Senators and Members of Congress for their active involvement in the regulatory fairness hearing process:

### Region I, New England States, Hartford, Connecticut, June 24, 1999

Senator Christopher Dodd	Senator Joseph Lieberman
Congressman John Larson	Congressman Sam Gejdenson
Congresswoman Rosa DeLauro	Congressman Christopher Shays
Congresswoman Nancy Johnson	

### Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999

Congressman John J. LaFalce	Congressman Jack Quinn
Congressman Thomas Reynolds	

### Region III, South Atlantic State, Pittsburgh, Pennsylvania, August 19, 1999

Congressman Phil English	Congressman Mike Doyle
Congressman Bill Coyne	

### Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999

Senator Jim Bunning	Congressman Ken Lucas
Congresswoman Anne Northup	

### Region V, Midwest State, Madison, Wisconsin, September 9, 1999

Congresswoman Tammy Baldwin

### Region VI, Southern State, Little Rock, Arkansas, March 4, 1999

Senator Blanche Lincoln

### Region VII, Heartland States, Omaha, Nebraska, May 11, 1999

Senator Chuck Hagel	Congressman Lee Terry
Congressman David McIntosh	

### Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999

Senator Craig Thomas	Senator Michael Enzi
Congresswoman Barbara Cubin	

### Region IX, Western State, Las Vegas, Nevada, March 12, 1999

Senator Harry Reid

### Region X, Northwestern States, Portland, Oregon, July 7, 1999

Senator Patty Murray	Congressman Brian Baird
Congressman David Wu	

## **Sharing the Perspectives of the RegFair Boards and Small Businesses**

Federal agencies and small businesses are together making progress in development of a fairer and friendlier regulatory enforcement and compliance environment. To the extent that agencies are changing their policies and procedures to meet the regulatory fairness standards, the RegFair Board Member and small business experience provide valuable feedback on the level of success agencies have achieved. The feedback underscores the need for agencies to internally monitor their enforcement and compliance practices in the field. These perspectives are shared with the agencies and agencies are asked to examine the specific concerns raised.

### **Perspectives of the RegFair Boards**

RegFair Board Members are the direct link to small business communities throughout the nation. As national small business leaders and advisors to the National Ombudsman, Board Members provide the small business perspective on the Federal enforcement and compliance environment. They alert RegFair to emerging trends, identify enforcement and compliance concerns and successes, and provide feedback on agency efforts to improve the regulatory enforcement environment.

Below is a summary of feedback received from RegFair Board Members, indicating differences between agency commitments to the Office of the National Ombudsman and individual performances by regulatory enforcement officials. The feedback also relates to agency practices that demonstrate a friendlier, solution-oriented enforcement and compliance environment. Each issue is associated with the Board Member who principally addresses it.

#### *Perspective of RegFair Board Member Joann Stockdale*

Occupational Safety and Health Administration (OSHA) issued a new regulation regarding the training and certification of forklift drivers that was effective December 1, 1999. Ms. Stockdale, whose company uses a forklift, was unable to obtain any compliance guidance on the regulation, which required changes in industry compliance practices. While in-house training on the forklift by the safety manager had been acceptable previously, OSHA's new rule mandates formal training that must be conducted by a certified trainer, or the business must provide off-site training for its employees. The new regulation also requires forklift drivers to pass a driving test. Ms. Stockdale reports that she was very lucky to have learned about the requirement and that securing the necessary training in such a short period of time was consuming and needlessly expensive.

The RegFair Board Member concluded that OSHA is doing an ineffective job of notifying small businesses about new mandatory requirements. She believes this is a systemic problem, stating that small businesses currently rely on word of mouth to learn of new rules. Ms. Stockdale concludes that OSHA is not effectively informing small businesses of changes in rules and regulations, appearing to contradict its response to the National Ombudsman's 1998 Recommendations. She suggests that agencies implement new rules twice a year, and mail notice of new rules to businesses based on their Standard Industrial Classification (SIC). This would make it easier for the agency to inform all affected small businesses of rules changes and would give them sufficient time to comply. It would also make it easier for small business trade associations to become informed of changes, and in turn, inform their members.

#### *Perspective of RegFair Board Member Dan Morgan*

Mr. Dan Morgan, chair of the Region VII RegFair Board, reports that USDA's Agriculture Marketing Service inspectors have done a good job of working with producers in his region. The inspectors have been

responsive in disseminating information about testing procedures and auditing procedures for labeling requirements.

Mr. Morgan reports that enforcement and compliance actions by USDA's Food Safety Inspection Service have created problems for many small businesses in his region. The problems began in May 1999, with new export shield color requirements on export documents. The wrong export documents issued by FSIS resulted in product being detained in foreign ports. This detention in ports greatly increased the cost of doing business. Increased costs borne by the exporters included new laboratory testing, holding fees, late payment, canceled purchase orders, increased production costs from the cattle producers because of their inability to ship. Targeted inventories for this market were liquidated at substantially reduced prices. Entire markets for producers were lost because of ineffective negotiators within FSIS and lack of communication about export document requirements from the Washington, D.C. to the local field offices. It appears that no thought was given to the effects of actions by FSIS on small business. No person with independent authority to solve problems stepped forward to assist producers and small business.

Small business testimony at the regional RegFair hearing indicates that "rogue" FSIS inspectors are simply transferred to another plant, instead of being disciplined or fired. Transferring a "rogue" inspector to another plant simply moves the compliance problems to other small businesses.

Mr. Morgan reports that AMS inspectors work in cooperation with small producers in his region and effectively disseminate information and inform small businesses about new regulations.

Another issue brought forward by Mr. Morgan concerns FSIS' ineffective implementation of its own meat tagging requirements. The requirement called for export certificates to be printed with a blue shield rather than the customary black shield. Mr. Morgan reports that the agency failed to use the blue shield and E.U. officials quarantined the meat because of the wrong shield color. The impact of the USDA's actions, Mr. Morgan reports, was the loss of purchase orders, and unnecessary storage and testing fees. The impact of USDA's actions cost Mr. Morgan's small business \$100,000 in revenue, additional fees and expenses, and lost market share. He said that the FSIS did not provide an avenue for an expedited review, nor a "problem-solver" who could provide a response.

#### *Perspective of RegFair Board Member Scott George*

RegFair Board Member Scott George raises a number of important enforcement and compliance concerns. He presents feedback on agency deficiencies in notifying small businesses about agency rules, giving negative ratings to staff who treat small businesses poorly, and failing to protect small businesses from retaliation.

Mr. George notes that the Immunization and Naturalization Services (INS) informed RegFair at the Region VII hearing that its rules do not allow any enforcement or compliance flexibility or allowances for business size. Mr. George believes this is a clear indication that INS is not complying with SBREFA and the Regulatory Flexibility Act.

Mr. George also suggests that testimony provided at the 1999 Region VII RegFair Board Hearing indicates that since 1978, the EPA has adequately notified the public about the dangers of lead paint in terms of leasing residential space. A rule revision in June 1999 expands notification requirements. According to the rule, renters must now be notified of potential lead paint hazards on painted surfaces of two or more feet.

The lead paint rule requires anyone performing the work to give advance notice to residents who might be affected. Acknowledgment that the residents have received the notices must be kept for three years, and failure to comply results in penalties of up to \$25,000 per day.

Many groups are affected by the rule, such as heating & air conditioning contractors, electricians, plumbers, or remodeling contractors, Mr. George believes that the EPA has inadequately notified affected small businesses of the new requirement. His own canvass of small businesses showed that few small business owners in his area are aware of the new rule. Those who knew of the rule learned about it through their own trade associations.

Adding import to that belief, RegFair Board Member Larry Mocha spoke with 15 members of the Air Conditioning Contractors of America recently and only one member had heard of the lead paint requirement. Board Member Joann Stockdale also spoke with small contractors who were unaware of the requirement.

The Office of the National Ombudsman contacted EPA on this issue and its initial response was that they have taken no enforcement actions on this new rule against contractors performing renovation. Board Members have indicated their concern that EPA may be creating an uneven playing field for small business. The EPA needs to clarify whether and how the rule applies, so that all contractors are following the same compliance practices.

Among recent success stories, Mr. George notes that Region VII and Region VIII OSHA offices have been working with the Kansas Oil Extraction Association and the Home Builders Association of Metropolitan Denver, respectively, to develop cooperative compliance assistance programs. Some of these efforts have resulted in simple and understandable guides for small businesses and their employees. The OSHA-small business partnerships are focused on areas of major safety risk and have tremendous potential benefits in reducing accidents and injuries, as well as reduced regulatory violations and insurance premiums. In several areas of the country, OSHA is offering small business forums to explain the agency's small business assistance programs. The forums have also been used as a vehicle to inform small businesses about their rights to regulatory fairness and to comment to the Office of the National Ombudsman on any Federal agency's enforcement or compliance activity. These forums are also in step with the National Ombudsman's current Recommendation 3, which calls for agencies to provide feasible guidance for small businesses to comply with regulations.

### **Perspectives of Small Businesses**

RegFair provides small businesses with an opportunity to present their perceptions throughout the year at RegFair public hearings. The following are examples of concerns raised by small businesses that the Office of the National Ombudsman and RegFair Board Members believe raise concerns that should be addressed by the affected agencies. The testimony will be sent to agencies for response in a manner similar to the way small business comments are sent to agencies. The testimony and agency responses will be taken into account where it is necessary to re-evaluate prior ratings as to agency implementation of the National Ombudsman's Recommendations.

#### *NuTech Laundry & Textiles*

Mr. Jack Robinson, owner of NuTech Laundry & Textiles in Maryland, testified at the Region III RegFair Board Hearing, that INS enforcement actions cost him many employees and substantial revenue and created conditions under which the company defaulted on SBA loans and IRS tax payments. One year later, NuTech had still not received an expedited review of the enforcement action. Mr. Robinson stated in his testimony that "[t]here has been nothing adjudicated[on our case]. We have no criminal charges against us whatsoever. They cited us for civil penalties [that] they have not enforced. At the time they gave us the notice, we filed an appeal, and there's been no action for a year."

### *Carlson & Dreffs*

Mr. Bill Dreffs, a small business owner who testified at the Region VII hearing, had a USDA “Federal inspector, who had worked closely with me for 15 years, along with three different circuit supervisors above him. I had received extreme efforts of cooperation to work together with me during that 15-year tenure. However, when the new inspector, a Dr. Hauser, took over in February and a new circuit supervisor was assigned to me, everything that we had established and practiced in the prior 15 years changed dramatically.” Mr. Dreffs said that the new circuit supervisor was verbally intimidating, unresponsive to requests for compliance assistance, retaliated against his company for challenging his decisions, and wrongly shut down his plant and then delayed the reopening, causing him to needlessly lose business. He also is concerned about the excessive enforcement and compliance activities he endured due to a running dispute between his USDA Inspector-in-Charge and Dr. Hauser. Mr. Dreffs feels he was forced to withdraw from the USDA Voluntary Inspection Program because the circuit supervisory was implicitly determined to put Mr. Dreffs company out of business. Even after he withdrew from the voluntary inspection system, Dr. Hauser and other USDA employees took additional enforcement and compliance actions that Mr. Dreffs believes are evidence of retaliation and harassment. With Mr. Dreffs’ permission, his concern has been referred to the USDA’s Inspector General.

### *National Meat Association*

Ms. Rosemary Mucklow, Executive Director of National Meat Association, testified at the Region VII RegFair Board hearing about a small meat packing plant that felt it was being harassed by a USDA inspector. The plant owner had filed a complaint about the inspector, which stated that the inspector was, “. . . unprofessional, demeaning and [used] abusive language delivered in a loud manner to me in public in front of my employees. Avoidance and willful obfuscation by the inspector of any effort to be a resource of accurate information about the details of the inspection program, establishment of time limitations to answer questions and so on, not provided by regulation, with the intent to confuse and pressure the company. And, finally, an accusation that the company and/or one of its employees had falsified records. A very serious violation of many Federal laws.”

According to Ms. Mucklow, the small business owner told the agent’s supervisor he was afraid of retaliation and the supervisor said he would look into the matter immediately upon his return from a training seminar, in two weeks. Nevertheless, the business owner remained fearful because under agency rules, the agent involved would have received a copy of his letter two weeks previously. The business owner then wrote to the district manager to protest the business’s loss of production due to the agent’s actions. The losses appeared, to the business owner, to be due to over-inspection, intimidation, harassment and retaliation.

According to Ms. Mucklow, the agent made a claim of verbal harassment against the company and that claim was the basis of shutting down the plant for 15 hours. The small business owner said that this was merely one incident in a pattern of intimidation that continued through many inspections, false accusations, and harassment, even when the agent’s supervisors were present, and lasted until the agent was transferred for training.

### *Addressing Enforcement and Compliance Practices*

In all instances the enforcement or compliance issues identified above are of concern to the small business community generally. RegFair seeks to address enforcement and compliance concerns systemically by working with small businesses and agencies to develop prophylactic measures that reduce or eliminate the occurrence of improper regulatory enforcement and compliance activities. The reader will note from Evaluative Tables 1 and 2, that agencies only achieve the highest evaluative ratings from the National Ombudsman if they specifically address the causes of the enforcement or compliance concerns.



## **Helping Small Business**

RegFair has made an ongoing commitment to publicly air small business' ideas and suggestions. For the past three years, the Office of the National Ombudsman and RegFair Boards have listened carefully to what the small business community had to say about Federal regulatory enforcement and compliance activities. Among the suggestions, ideas and concerns offered, small businesses want the Regulatory Fairness Program to help them achieve agency accountability in regulatory enforcement and compliance activities.

The Office of the National Ombudsman and the Regulatory Fairness Boards have worked diligently to address this concern and to help small businesses hold agencies accountable for their regulatory enforcement and compliance activities in the following ways:

- Requested that agencies notify small businesses, in plain written language, of their right to comment through the RegFair program at the commencement of a regulatory enforcement or compliance activity;
- Requested high-level, independent agency reviews of small business comments sent to them by RegFair. This guards against retaliation and ensures that small business concerns will be heard and responded to by agency representatives that can make systemic changes to address those concerns;
- Obtained meaningful agency reviews and written responses to small business comments and regulatory fairness questions;
- Held ten RegFair hearings throughout the country, where small businesses and agencies have an opportunity to attend, testify and answer questions on enforcement and compliance activities. With the transcripts made available on the World Wide Web the dialogue is extended nationally to Members of Congress, small businesses, and trade associations;
- Stressed matters of concern to small businesses in addition to small business comments; and
- Helped small businesses and agencies develop goals-driven compliance programs.

### **Notification of Small Business' Right to Comment**

The Office of the National Ombudsman has worked to ensure that agencies provide small businesses with clear, written notification of their right to file comments, addressing any agencies' regulatory enforcement and compliance activities directly with the Office of the National Ombudsman, or their regional Regulatory Fairness Board. The Office of the National Ombudsman insisted that, to be most effective, the written notification language must be provided at the time of the regulatory enforcement and compliance activity.

The notification language also informs small businesses that the National Ombudsman, with advice from the RegFair Boards, evaluates and rates the enforcement and compliance activities of these Federal agencies, and issues an Annual Report on its findings to the Congress and the affected agencies.

The EPA provides an example of the broad scope of that right. The EPA's Office of Enforcement and Compliance Assurance produced an information sheet that among other useful information provides small businesses notice that they can comment on any Federal regulatory enforcement or compliance activity with the Office of the National Ombudsman and RegFair Boards. The information sheet is also provided to tribally owned small businesses.

The EPA provides the notice at the commencement of regulatory enforcement actions as well as remedial enforcement activities under:

- i. the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”),
- ii. the provisions of the Resource Conservation and Recovery Act (“RCRA”) concerning corrective action and remediation of underground storage tanks, and
- iii. the provisions of the Oil Pollution Act and Clean Water Act section 311 concerning remediation of oil and hazardous substances spills.

EPA has identified the following enforcement or compliance activities when small businesses are notified of their right to comment. They include:

- a. inspection
- b. warning letter
- c. reminder notice or letter
- d. compliance audit program or incentive letter or notice
- e. information collection request
- f. Subpoena
- g. show cause letter
- h. administrative search or other warrant
- i. stop sale, use and removal order (SSURO)
- j. notice of violation or other notice letter
- k. administrative complaint
- l. administrative order or administrative penalty order
- m. Superfund general or special notice
- n. cost recovery demand letter

The EPA has instructed its employees to err on the side of providing the right to comment notice to small businesses. We commend the EPA for this effort to comply with both the letter and spirit of SBREFA’s notice requirements

### **High Level, Independent Agency Review and Guarding Against Retaliation**

The National Ombudsman requested that agencies designate a high-level official, independent of the regulatory enforcement or compliance activities referred to in each small business comment. The official(s) will review small business comments directed to the agency by RegFair.

This procedure provides meaningful and credible agency reviews, and ensures that agencies, at the highest levels, are made aware of small business feedback whether it be a compliment, concern, or mixture of the two. High-level officials are in positions to monitor agency effectiveness at listening and responding to small businesses, and to make changes to agency policies and procedures to eliminate concerns and replicate successes.

The high-level, independent review helps ensure that the small business’ identity is not revealed to the individual(s) who took the enforcement or compliance activity, and guarantees that responsible officials are made aware of any retaliation concerns.

It is important that agency officials who can take effective remedial and deterrent actions are notified of the retaliation concerns. Continually emphasized is the need for agencies to stress zero tolerance with respect to employees who retaliate against small businesses, and to strictly ban even the appearance of retaliation against small businesses.

In instances where there is an indication that retaliation may have occurred against a small business, the Office of the National Ombudsman refers the concern to the agency's Office of the Inspector General for its review and appropriate action on the allegation. The Office of the National Ombudsman has established a protocol by which to make these referrals and maintain the confidentiality of the small business to the extent permitted by law. We are pleased to report that all Inspectors General are fully cooperating with RegFair and will protect the identity of any referred small businesses as required by SBREFA. To date the Office of the National Ombudsman has made three referrals to agency Inspectors General. In two of these referrals, the Inspectors General did not find any retaliation. In the third instance, there is no result to date.

### **Small Business Comments**

In addition to requesting high-level, independent reviews of the enforcement or compliance activity, the Office of the National Ombudsman asks agencies to consider and respond to each small business comment received, and also answer the National Ombudsman's specific questions about the regulatory enforcement or compliance activity taken. The process provides government accountability and responsiveness in action. *(See The State of Federal Regulatory Enforcement Fairness for Small Businesses: Evaluating Agency Enforcement and Compliance Activities: Learning from the Enforcement and Compliance Experiences of Small Businesses, Page 16.)*

For each small business comment, the Office of the National Ombudsman asks agencies how the enforcement or compliance activity was determined, and whether the agency considered a lesser enforcement or compliance activity. Agencies are asked whether the small business had sufficient notice and an adequate opportunity to correct the violation. Also of interest is whether and how the agency considered the economic impact of the enforcement or compliance activity on the small business in question. Finally, agencies are asked how they believe the enforcement or compliance activity taken reflects the requirements of SBREFA.

With the RegFair Comment process, small businesses hold agencies accountable to the principles of SBREFA, before Congress.

### **RegFair Board Hearings**

The 1999 hearings were more geographically dispersed than in previous years. Some were held in urban centers and others in rural areas of the United States, reflecting increased representation by agricultural and livestock interests. No matter where the hearings are held, they serve the same purpose. They introduce the National Ombudsman and the RegFair Board members to diverse sectors of the small business community, increase awareness of the small business owners' rights to regulatory fairness, and bring small business issues and recommendations to the attention of the Administration and Congress.

The hearings allow RegFair to gauge the success of agency compliance efforts and introduce regional and local small business issues into the national regulatory fairness debate. Small businesses testify concerning their Federal regulatory experiences. Federal agencies in attendance listen and learn about the enforcement and compliance issues that are of concern to the region's small businesses. Since the hearing transcripts are posted on the World Wide Web, agencies not in attendance may still read about the concerns voiced at the hearings. Whether in attendance or not, agencies use the hearing feedback to measure the success of their regulatory activities and develop solutions that address small business concerns.

## **Matters of Concern to Small Businesses**

Small businesses have significant regulatory enforcement and compliance concerns that are not limited to, a specific enforcement or compliance activity. These concerns may be voiced in general terms.

As mentioned in the National Ombudsman's 1999 Report to Congress, the Office of the National Ombudsman, with advice from the Regulatory Fairness Boards, have determined that these general enforcement or compliance concerns of small businesses are covered under the Regulatory Fairness Program as a "matter[] of concern to small businesses" and the statutory responsibility of "evaluating the enforcement actions of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency." (*15 U.S.C. § 657 and National Ombudsman's 1999 Report to Congress, page 8*)

RegFair has been addressing matters of concern to small businesses through the enforcement and compliance issue case studies and its recommendations to Congress and the affected agencies. This year RegFair developed the mechanisms to identify and address more of these matters of concern to small business. Based directly on the small business feedback at hearings and through their written comments, the Office of the National Ombudsman, with the advice of the Regulatory Fairness Boards, has identified several general enforcement and compliance matters of concern to small business. The involved Federal agencies will be sent a synopsis of the issue and asked to review the concern and identify any remedial steps the agency will take to address the matter of concern to small business.

Rather than merely learning about matters of concern to small businesses in the Annual Report to Congress and the affected agencies, this process provides agencies an earlier and more regular opportunity to learn about, consider, and address these enforcement and compliance concerns. The process also increases the impact that small business testimony and written feedback has on the regulatory enforcement and compliance environment.

The review process heightens the impact of Section 222 of SBREFA, as RegFair helps to ensure that positive changes occur in both the Federal regulatory culture and the enforcement and compliance operating environment for small businesses.

## **Helping Agencies Develop Results-Driven Compliance Programs**

### *A Comprehensive Dry Cleaners Guide*

On October 21, 1998, the Office of the National Ombudsman and the Rocky Mountain Regional Regulatory Fairness Board Members met with Denver EPA officials, including EPA Regional Administrator Bill Yellowtail. The meeting was initiated through the efforts of RegFair Board Member, Albert Gonzales. The purpose of this meeting was to identify everyday SBREFA issues and to examine whether a joint endeavor was feasible.

During this initial meeting, one of the issues raised was that of "retribution" and the perception of fear held by the small business community. The group agreed that one way to assuage that fear was through open communication from the enforcement personnel. An excellent example of this type of communication was the "Notice of Rights at Time of Enforcement" language that was held out as one of the basic tenets of the RegFair Program.

Over the next 5 months, discussions were held between the Office of the National Ombudsman and the Denver EPA to determine an appropriate area where a joint endeavor to improve industry compliance, might be possible. In early February, it was decided to try to build upon the success of the National Association of

Homebuilders and OSHA. The result of that effort was a guidebook summarizing OSHA's regulations in an effort to increase compliance without resorting to fines or penalties. EPA and the National Ombudsman agreed to create a similar project for the dry cleaning industry, given that it was highly regulated and relatively active both regionally and nationally.

Over the next few months, the Office of the National Ombudsman identified potential participants, including Mr. Warren Toltz, a RegFair Board Member and owner of a number of dry cleaning establishments in Denver. Representatives from the Rocky Mountain Fabricare Association, owners of other dry cleaning establishments, as well as a representative from a dry-cleaning supply company were also recruited. The project explores ways to address the regulatory concerns of the Denver area dry cleaners, while increasing their compliance with EPA guidelines.

The Dry Cleaner Workgroup Committee focused on the existing compliance models available to the industry on both the Federal and state levels. Although the responsibility in individual cleaning establishments lies with all employees, the group decided to develop this guide for the owners. The goal was to develop a handbook outlining simplified procedures for increasing compliance with EPA regulations affecting the dry cleaning industry that the owners could use as a plain language guide.

The group agreed to hold an ongoing series of discussions, and expanded their meetings to include representatives from the Colorado Environmental Protection Agency (CEPA), as well as representatives from Colorado Air Pollution Control Department and the Department of Public Health and Environment. Both state agencies were charged with compliance and oversight responsibilities. The group inventoried existing dry-cleaning guides and began compiling materials.

Throughout the summer of 1999, a number of productive meetings centered around creating materials that would provide a general overview of environmental regulations affecting dry cleaning establishments, including the environmental impacts of the dry cleaning industry on air, land and water quality. The group focused on preparing a document that is easy to read and user-friendly, yet inclusive enough to cover all the requirements. The ultimate goal of the document was the reduction and elimination of pollution from the dry cleaning process.

On September 16<sup>th</sup>, a refined draft was presented by CEPA and reviewed by the group. After some minor editing, the working group agreed to present a final draft to the participants at the Rocky Mountain Fabricare Association's annual meeting for the purpose of obtaining feedback from potential users.

On October 27<sup>th</sup>, the group discussed the Fabricare Association's reaction to the draft document. Presently, the document is being revised based on input from the Fabricare Association. Additional input from OSHA has been sought. During this final review process, the group is concentrating on assessing the document's clarity.

The Dry Cleaner Workgroup Committee continued to meet from November through February 2000. The main focus of these meetings was to finalize a guide that would be appealing to the dry cleaners and would contain all the regulatory requirements and pollution prevention practices in one concise document. This comprehensive document would address the practical considerations of the dry cleaning industry and has evolved into a document that is unique, enticing and user-friendly. The workgroup believes that this guide will enable dry cleaners to better understand environmental regulations and encourage pollution prevention practices.

Rollout of the final product, entitled "Pressing Concerns: A Simplified Guide to a (Dry) Cleaner Environment" is projected for April 2000.

## **Agency Best Practices**

A major goal of the National Ombudsman and the Regulatory Fairness Boards in putting forward these best practices is to provide a means through which agencies may obtain new ideas to incorporate a small business-friendly approach into their internal processes and procedures.

Best practices detail how agencies incorporated small business-friendly policies and procedures into their regulatory enforcement and compliance efforts. This year's best practices are not restricted to last year's recommendations, but rather are illustrative of novel approaches developed by agencies to accomplish voluntary compliance by the small business community through implementation of recommendations from prior reports. The National Ombudsman and RegFair Boards hope that publicizing these examples of best practices will assist small business advocates and agencies in their own efforts to develop innovative solutions to enforcement and assist compliance concerns.

The examples contained in this report include agencies' efforts to communicate with their small business customers to achieve greater compliance. Some of these practices describe partnering between two agencies to educate small business to increase their awareness of the law. Other practices describe agencies' inventive efforts to actively seek out private sector input for improved customer service. By no means is this listing all-inclusive, but rather it contains a sampling of those practices which best demonstrates the ground-breaking efforts to create that "bond of trust" between regulator and regulated that is essential to creating a regulatory environment that is based on voluntary compliance. Therefore, this section of the report shares specific measures that have been put into practice by a number of agencies and the National Ombudsman highly encourages other agencies consider similar measures, where appropriate.

### **Consumer Product Safety Commission**

The Consumer Product Safety Commission's (CPSC) Fast-Track Product Recall Program:

CPSC conducts an average of 350 product recalls each year. Under the Consumer Product Safety Act, firms are required to report potentially hazardous products to the Commission. Traditionally, when a firm reports, the CPSC staff conducts any necessary investigation and makes a preliminary determination of whether the reported product is defective and presents a substantial hazard.

Some firms that were inclined to recall the product themselves found that the CPSC's formal evaluation process held up the recall. In response to those concerns, in March 1997, CPSC adopted the Fast-Track Product Recall Program as a voluntary alternative to the traditional procedure.

Under the Fast-Track Program, CPSC staff does not make a preliminary hazard determination if a firm provides the necessary full report information and initiates an acceptable consumer-level recall within 20 working days of its report. The Fast-Track Program eliminates CPSC's need to determine whether there is a defect. Instead, if it approves the corrective action, the recall can begin.

Fast-Track has made it easier for firms to recall potentially dangerous products. The program focuses on results, not process. By streamlining CPSC review, Fast-Track makes compliance with the law less burdensome and less costly, which is a particular benefit for small businesses.

### **Drug Enforcement Administration**

The Drug Enforcement Administration's (DEA) Diversion Control Program emphasizes cooperation and voluntary compliance with regulated industries.

DEA has institutionalized a policy of graduated enforcement actions depending on the severity of the violations involved as well as the violation history of the company.

For lesser violations, DEA relies on actions designed to foster compliance, including: meeting with a company's management; a formal Letter of Admonition to which the company may respond, or informal hearings in which anyone against whom civil action is being contemplated has an opportunity to present his/her views and proposals for bringing violations into compliance with the law.

As a rule, revocation proceedings, and civil/criminal action are pursued only in those instances where willful violations of the law or regulations have occurred or in cases where the violations present a substantial threat to the public's health and safety. DEA may suspend all or part of a civil penalty, provided that the registrant does not violate the laws or regulations in the following year.

## **OSHA**

Small Business Forums:

In March 1999, OSHA held a successful small business forum in Washington, DC. OSHA has instructed its ten Regional Offices to conduct similar forums in the regions on a continuing basis and is planning another national forum in the DC area in early spring.

New pilot partnerships:

OSHA has created a partnership with contractors in Southern Florida called "CARE" (Construction Accident Reduction Emphasis). CARE is a joint venture with Southern Florida's builders that the agency hopes will reduce the comparatively high accident rate in the construction industry.

OSHA is also working with the Home Depot chain to create a pilot program in which OSHA's local offices will work with Home Depot Safety Managers to provide instructors and materials to conduct a program for small business contractors on Safety in the Workplace. The first pilots will be in Dallas, Texas and Atlanta, Georgia. If successful, OSHA plans to expand the program to other Home Depots across the country, and make similar proposals to other major home improvement centers.

## **Environmental Protection Agency:**

*Request for Inspector General Review of EPA's Implementation of SBREFA.*

EPA's Office of Enforcement and Compliance Assurance (OECA) specifically requested that a review of EPA's implementation of SBREFA be included in its Inspector General's assessment of EPA's activities. The Inspector General's survey focused on EPA's compliance with the Act in establishing policies and programs to support the rights of small entities in enforcement actions.

The Inspector General determined, based on a review of minutes from SBREFA hearings, SBA's Reports to Congress and small business comments on EPA enforcement actions, that "OECA's responses adequately address the concerns of the Ombudsman and small business."

## **Federal Communications Commission (FCC)**

In November 1999, the Federal Communications Commission (FCC) created an Enforcement Bureau which centralizes the agency's enforcement functions. This initiative consolidated enforcement functions and personnel from four other bureaus, maximizing FCC consumers ability to obtain quick, clear and consistent information about their rights under communications law. The FCC expects this reorganization to facilitate action on matters involving Regulatory Fairness Program rights, including outreach and formal enforcement efforts.

## **Internal Revenue Service**

During 1999, the IRS continued its Problem Solving Days (PSD), on a monthly basis (frequently on Saturdays, evenings as well as weekdays) at district offices. Customer satisfaction surveys and employee surveys were conducted at each PSD and an outside contractor also provided monthly analysis reports. Mandatory PSDs are scheduled at every district at least once every other month during calendar year 2000.

The IRS partnered with the SBA to place IRS small business tax forms and publications, and an informational CD-ROMs at all Business Information Centers (BIC) and One-Stop Capital Shops. These resource centers are the primary source of information for prospective and start-up business enterprises. The IRS enhanced this partnership with the SBA by placing IRS technical specialists at four BICs. The pilot program's goal was to educate small businesses on tax related issues and improve tax understanding and compliance.

The third notable practice of the IRS concerns establishing Citizen Advocacy Panels (CAP) in all four IRS regions. The CAPs are comprised of seven to twelve representative citizens and the local Taxpayer Advocate. The mission of the CAP is to:

- Provide citizen input into enhancing IRS customer service by identifying problems and making recommendations for improvement of local systems and procedures;
- Elevate identified problems to the appropriate IRS official and monitor the progress to affect change; and
- Refer individual taxpayers to the appropriate IRS office for assistance in resolving their problems.

Open public meetings have been held at least twice a year in various locations throughout the tax districts to solicit customer service issues, obtain information, identify taxpayer concerns, and solicit feedback on proposed panel recommendations for improvement. These meetings will continue throughout 2000.

One of the CAPs will focus on small business issues and include small business owners. The IRS will assess the impact of these CAPs before deciding when and how to expand the program.

## **Small Business Administration**

In mid-1999, Administrator Aida Alvarez committed SBA to actively informing its extensive small business portfolio about RegFair. SBA program and field offices are beginning to include RegFair material in their mailings to small businesses, at small business events, and in their office displays.

Over the course of several years, SBA's RegFair educational efforts will reach many of the 25 million small business owners across the country. These ongoing efforts will inform small businesses of their right to comment with RegFair on any Federal agency's regulatory enforcement or compliance activity. Businesses that contact SBA for virtually any reason, including start-up advice, loan guarantees, equity investments, and government contracting will receive information on their rights to regulatory fairness.

By aggressively informing small businesses about RegFair, the SBA will greatly extend the regulatory fairness dialogue and make it more geographically and economically representative. SBA's efforts will also reach more minority and women owned small businesses.



## **Department of Transportation**

According to the Department of Transportation (DOT), its agencies have special programs that protect from enforcement those who immediately report a rule violation so the agency can determine whether there are problems with a rule. For example, the FAA's Reporting and Correction Policies provide that, under most circumstances, if a company self-discloses a violation that is not intentional, corrects the condition immediately, and takes steps to prevent it from recurring, a reduced penalty or no penalty will be imposed. FAA also performs "courtesy evaluations" of pilots and aircraft, without risk of penalty if deficiencies are corrected.

### **Agency Training for Enforcement / Compliance Personnel**

The National Ombudsman's 1999 Report to Congress included a recommendation that Federal agencies should provide formal, periodic training for enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program.

Several of the agencies have implemented this recommendation. The Securities and Exchange Commission (SEC) has developed a training module for employees who serve as examiners to small business broker-dealers. The module includes training on SBREFA, and specific segments on RegFair. SEC examiners are instructed that they must be sensitive to how small firms achieve compliance, and to examine whether the ways they achieve it make sense under their circumstances.

The U.S. Department of Commerce instituted a formal training program for employees at the National Oceanic and Atmospheric Administration (NOAA). The Department conducts the training that includes a presentation covering the provisions of SBREFA, an explanation of the RegFair program and the recommendations from the National Ombudsman's two previous reports. A hard copy of the presentation was provided to each attendee and circulated to all NOAA enforcement personnel.

## **Marketing Initiatives with Small Businesses**

### **Moving RegFair On-Line**

Small businesses are increasingly integrating the Internet into their business operations. They are using the World Wide Web to interact with private business partners and access needed information from their government. Research findings in a July 1999 report on the subject by the SBA's Office of Advocacy indicate the following:

- a. Between 1996 and 1998 the percentage of small businesses with Internet access nearly doubled from 22 percent to 41 percent;
- b. Thirty-five percent of small business owners maintain a web site;
- c. Seventy-eight percent of small business owners have web sites primarily to reach new and potential customers. Small businesses use the Internet for e-mail, customer-based identification, advertising, consumer sales, business-to-business transactions, and research; and
- d. Small businesses utilizing the Internet have higher revenues, averaging \$3.79 million in 1998 compared to \$2.72 million overall.

In early 1999, the Office of the National Ombudsman recognized that there was a large number of small-business visitors to the RegFair web site who were not filing comments on their Federal regulatory enforcement and compliance experiences. As a result, the Office of the National Ombudsman, with the advice of the RegFair Boards, re-engineered its workflow processes and designed a database and web site that would bring the RegFair program to any small business person with access to the Internet. With assistance from SBA's Chief Information Officer, RegFair initiated development and implementation plans for a new web-based comment process.

Since the Regulatory Fairness program was established, technology has made the program more accessible to small businesses. For example, a toll-free information line and fax-back service were established at 888-REG-FAIR (888-734-3247). During the program's first-year, an informative web site was created for small businesses and their professional associations to visit. The site provided a description of the program's mission, material on the Small Business Regulatory Enforcement Fairness Act, contact information for the Office of the National Ombudsman and the Regulatory Fairness Board Members, the one-page Federal Agency Appraisal Form, and other background and marketing information.

Starting in 1998, the program added on-line transcripts of each regional Regulatory Fairness Board Hearings held across the country. This addition made it possible for Members of Congress, the Administration, RegFair Board Members, and business associations to learn about the regulatory enforcement concerns of small business owners. Numerous stakeholders in the regulatory reform arena have stated that the addition of hearing transcripts has been a tremendous benefit to their own efforts to improve the regulatory environment.

With the Office of the National Ombudsman's initiative on web-based comment filing, small businesses will be able to complete RegFair's one-page Federal Agency Appraisal Form, write their comments, and attach supporting documents all through a standard web browser. Small business owners who file on the World Wide Web will have the same choices with regard to either disclosing or protecting their identity. All information is encrypted and can be viewed only with the appropriate user ID and password. Businesses may elect to disclose their identities to RegFair, RegFair and the affected agency, or to the public.

Small businesses may also choose to receive correspondence from the Office of the National Ombudsman by E-mail, fax, or U.S. Mail. Additionally, small business owners will be able to track the status of their comments and any agency response by logging onto the RegFair web site.

When a business owner submits an enforcement or compliance comment, the Office of the National Ombudsman determines program jurisdiction, identifies regulatory fairness issues, drafts specific questions for Federal agencies, and provides the agency with the comment itself or a version of the comment which may include the small business's identity. When the agency responds to the comment, the small business will be notified and may read and print the response with a web browser. (*See Helping Small Businesses Achieve Accountability.*)

Web-based comment filing will have two benefits. First, it will become very convenient for small businesses to share their enforcement compliance experiences, obtain independent, high-level reviews, and help the Administration, Congress, National Ombudsman and Regulatory Fairness Board Members improve the regulatory environment for small businesses. Second, web-based comment filing will also reduce the time needed by the Office of the National Ombudsman and the Federal agencies to review and take action on each small business submission.

During the first quarter of 2000, comments submitted by small businesses through the RegFair web site will be sent to high-level, independent agency officials electronically. Once authorized, Federal agency representatives will electronically retrieve small business comments and the National Ombudsman's regulatory fairness questions from the RegFair web site. Agency officials will be assigned user IDs and passwords to obtain the comments as well as to deliver their responses. As with the paper-based small business comments, the small business' identity will be protected by the Office of the National Ombudsman unless the small business chooses to disclose its identity.

By moving the transmission of small business comments to Federal agencies on-line, agency receipt of each small business comment will be more easily assured, and response times will be more easily tracked, further reducing RegFair's response time to small businesses.

#### *RegFair Board Access to Regional Comments via the World Wide Web*

RegFair strives to enhance the ongoing advisory role of the RegFair Boards. In 1999, RegFair initiated quarterly Regulatory Review conference calls that are dedicated to the discussion of current comments and other small business feedback. By dedicating a series of calls to substantive enforcement and compliance concerns the Board Members provide contemporaneous advisory involvement in the ongoing comment review process.

During the second half of 2000, web-filed small business comments will be available to the RegFair Board Members. Direct access to the small business comments will:

- a) enhance Board Member knowledge of regulatory enforcement or compliance concerns in his or her region;
- b) allow Board Members to be contemporaneously involved in giving advice relating to the comment evaluation; and
- c) allow Board Members to work on regulatory fairness concerns at times that are convenient to their schedules.

A web-based comment filing system is also being designed to enhance Board Member access and advisory involvement in the individual comment review and evaluation processes, and to allow greater communication between Board Members and small businesses. The software being developed will automatically notify, by e-mail, regional Board Members of any new regional comments. The e-mail will

link the RegFair Board Members to web page(s) containing the actual comment text and, in many cases, supporting documents. The system will later notify board members of the agency responses and again link them with the response. The comment documents that Board Members will be able to access electronically will be appropriately password protected and encrypted. The process will also allow RegFair Board Members to electronically append their advice to individual comments.

RegFair Board Members are very enthusiastic about the web-based comment review capability and look forward to their heightened involvement with the small business comments. (*Also see Outreach: RegFair Outreach Innovations, RegFair Internet Web Site.*)

### **Marketing RegFair through SBA's Program and Field Offices**

Administrator Alvarez has committed SBA to help make the Regulatory Fairness Program a household name among small business owners throughout the country. The Administrator wants to leverage SBA's portfolio of small businesses, to make them aware of the RegFair Program and their right to comment on any Federal agency enforcement or compliance activity. To achieve the Administrator's goal, the Office of the National Ombudsman is working with SBA's program and field offices to help spread the word to small businesses about their rights to regulatory fairness, send comments to the National Ombudsman, and obtain high-level, independent agency responses to their Federal regulatory enforcement or compliance concerns.

With the SBA's leadership, the Office of the National Ombudsman and RegFair Board Members look forward to many more small businesses learning about and utilizing the RegFair Program to comment on enforcement and compliance activities by Federal agencies. With the support of the SBA programs, a real grass-roots movement is underway. By helping to educate small businesses on their regulatory fairness rights, SBA program and field offices are significantly enhancing the impact of SBREFA and the RegFair Program.

With the Administrator's leadership, RegFair has established agreements with many of SBA's programs to begin marketing RegFair in conjunction with their own marketing programs and small business communications. Importantly, these informative efforts will be ongoing, which means that businesses will hear about RegFair on multiple occasions and new SBA small business customers will also learn about SBREFA.

The SBA reaches a great diversity of small businesses. SBA has small business customers in all 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. It has programs that target economically distressed rural and urban areas. The agency reaches out across traditional racial and cultural barriers to aggressively serve minority entrepreneurs.

The range and manner of marketing efforts will also help ensure that the Regulatory Fairness Program will increasingly become a household name among small businesses. The 8(a) and the Small Disadvantaged Business programs assist minority and women-owned small businesses with government contracting. The HUBZone program, which helps foster small businesses operating in economically depressed urban and rural areas, will provide all of their small business customers with information on RegFair and their right to comment on any Federal agency's enforcement or compliance activity. The SBA District Offices that operate throughout the country will provide their local business contacts with RegFair cards in ongoing mailings and outreach efforts. SBA borrowers and banking partners across America will receive program information. Companies that work with SBA by investing in new and growing small businesses will help market RegFair to small businesses that are looking for equity investments. The Federal government's One-Stop World Wide Web resource site will provide web-surfing small businesses with information on and links to the RegFair Program.

The Office of the National Ombudsman is working with other SBA programs to reach even more small businesses. Reaching out and informing businesses about their rights to regulatory fairness increases the positive impact the program has on the small business regulatory enforcement environment. In the coming year RegFair looks forward to working with other Federal agencies to develop outreach and marketing plans that will reach each agency's small business customers.

### **Working with the Postal Service**

At a hearing in 1998 of the Subcommittee on Regulatory Reform and Paperwork Reduction of the House Small Business Committee, Congresswoman Sue Kelly, who chairs the Subcommittee, suggested that RegFair examine ways to distribute RegFair materials and information through the U.S. Postal Service. In following up on her suggestion, RegFair has been working with the Postal Service on implementing the idea.

Recent discussions have centered on testing the distribution of the RegFair Cards to determine the most efficient and effective distribution of the cards to small businesses nationwide. The Postal Service has conducted a demographic database study to ascertain which of the Nation's 33,000 Post Offices should distribute the cards, i.e. those with the most direct access to many small businesses. We expect to begin distributing RegFair Cards through 12,000 Post Offices in the spring of 2000.

Discussion also included the possibility of a reciprocal agreement between the Postal Service and the Small Business Administration. The proposed agreement would allow RegFair and other SBA materials to be distributed by the Postal Service, and would allow Postal materials specific to small businesses to be distributed through SBA avenues such as Small Business Development Centers (SBDCs).

## Outreach

Over the past 3 years, RegFair has expended much effort on the challenge of informing the national small business community of the new rights granted under SBREFA. Specifically, the Office of the National Ombudsman has made it a priority to advise small businesses of their right to comment on Federal regulatory enforcement activity through the Regulatory Fairness Program and the RegFair Boards.

RegFair is meeting this challenge in three ways: first, by reaching out to all sectors of the small business community through speeches, presentations and media interviews throughout the country. Second, the Office of the National Ombudsman and RegFair Board Members work very closely with major trade associations, Members of Congress and other prominent actors in the small business community to notify small businesses of their new regulatory rights. Third, to reach all sectors of the small business community, RegFair developed and initiated a number of outreach avenues such as the Business Leader Roundtable, the Association of the Month program, the RegFair Report, and the RegFair Information Card. These avenues are described below.

### RegFair Program Activities

. The Office of the National Ombudsman and RegFair Board Members have promoted RegFair through speeches, presentations, media interviews, contact with the small business community through trade associations and other groups, and through direct contact with small business owners. These efforts are beginning to produce greater awareness of RegFair.

While all of the board members are committed to informing their colleagues throughout the country of their right to comment through RegFair, the following is a small sample of RegFair Board Member activities during the past year.

#### *RegFair Board Activities*

- Sandra Lee, current Board Member and previous chair in Region II, spoke about the Office of the National Ombudsman and the Regulatory Fairness Boards to two morning anchorwomen with WABC and WCBS.
- Bobby Clark, former Chair and current Vice Chair of the Region IV Board, spoke to the Small Business Advisory Council of Kentucky. The Council was one of 50 state panels created under amendments to the Clean Air Act.
- Rita Mitchell, Region IV Board Chair, spoke to business owners at the Tennessee Economic Development Committee's Small and Minority Business Day in early May. The program was designed to enhance awareness of the importance of small businesses in Tennessee, and to encourage the creation of new opportunities for small and minority-owned businesses.
- Kathy Napoli, Chair of the Region IX Board, spoke about the Regulatory Fairness Program to approximately 250 women business owners at the National Association of Women Business Owners' (NAWBO) Public Policy Days.
- Warren Toltz, former Board Member from Region VIII and owner of a dry cleaning chain, has taken the lead in a working group with the Office of the National Ombudsman and regional EPA staff to develop ways to simplify and clarify regulations in the dry cleaning industry.

- In July 1998, Hawaii became the first state to enact legislation modeled on SBREFA. RegFair Board Member Tim Moore was instrumental in helping to pass this legislation. Mr. Moore was honored for these efforts last year with a joint award from the RegFair Program and SBA's Office of Advocacy. He also wrote an article on RegFair and the newly passed Hawaiian legislation that was published in the state Chamber of Commerce monthly magazine.
- With help from Bobby Clark, former Chair and current Vice Chair of the Region IV RegFair Board, the state of Kentucky has set up a state commission to study legislation modeled on SBREFA. Mr. Clark was also instrumental in the development of a RegFair article for a newsletter distributed to manufacturers throughout Kentucky.

## **RegFair Awards**

RegFair annually presents its RegFair Innovation Award to the small business owner, trade association or Federal agency that best exemplifies the spirit of SBREFA. The award encourages small businesses and agencies to identify regulatory fairness issues and solutions that help small businesses comply with the regulations more quickly, easily and inexpensively.

### *2000 RegFair Innovation Award*

The Office of the National Ombudsman will present the 2000 award to the Rocky Mountain FabricCare Association and the Region 8 Environmental Protection Agency (EPA) for their efforts to address the regulatory concerns of the Denver area dry cleaners, while increasing their compliance with EPA guidelines. The workgroup has developed a guidebook summarizing EPA regulations in an effort to increase compliance without resorting to fines or penalties.

### *1999 RegFair Innovation Award*

The 1999 RegFair Innovation Award was presented to two Denver-based organizations: The Home Builders Association of Metropolitan Denver (HBA) and the Region VIII office of the Occupational Safety and Health Administration (OSHA). These groups received the RegFair Innovation Award for their pilot program, called Homesafe, which helps small home building companies in Denver more easily comply with Federal regulations, while minimizing their chances of being fined or penalized.

A major component of the Homesafe pilot is a pocket guide that simplifies thousands of pages of OSHA regulations in 70 pages of clear, understandable pictures. In return for the builders' good faith efforts to follow the principles described in the pocket guide, OSHA promised not to cite participating home builders for non-serious violations, provided the violation is corrected within a reasonable time. The cooperative pilot program is expected to expand to the rest of the country.

This kind of innovative approach is exactly what small businesses have been looking for, as articulated during the 1995 White House Conference on Small Business, from which the idea for RegFair Program grew. It is an excellent way to help small businesses comply with the law, while reducing the burden Federal regulations can sometimes have on their day-to-day operations.

## Office of the National Ombudsman Activities

The Office of the National Ombudsman has also been making great efforts to achieve better communication with the small business community. The following is a small sample of the Office of the National Ombudsman activities during the past year. (*Also see Business Leader Roundtables, below.*)

February	National Coalition of the Investment Banker's Association
February	National Federation of Independent Business (NFIB) Small Business Regulatory Forum
February	National Board of the Regional Investment Bankers Association (RIBA)
March	Coalition of Federal Ombudsman
April	National Association of Manufacturers
April	Federal agency briefing for the Illinois Congressional delegation
April	EPA's Small Business Ombudsman / Small Business Assistance Programs
May	National Restaurant Association's annual convention
May	National Association of Manufacturers (NAM) field meeting in Chicago
May	Senator Peter Fitzgerald (R-IL) District Staff briefing
June	<i>Small Business</i> a broadcast segment of the local "Stock Market Observer" of Channel 24, a local business channel in metropolitan Chicago.
June	Chemical Manufacturer's Association
October	Air Conditioning Contractors of America

## RegFair Outreach Innovations

### *Business Leader Roundtables*

The Office of the National Ombudsman and the RegFair Boards held Business Leader Roundtable Discussion Groups across the country to build stronger relationships with small business trade associations at the state and local levels.

These Roundtable Discussion Groups are intended to help the Office of the National Ombudsman and RegFair Boards gauge the effectiveness of past marketing efforts, gain insight on how to improve the program, and enlist local support in informing small businesses of their rights to regulatory fairness through the RegFair Program.

- A Business Leaders Roundtable was held in Cheyenne, Wyoming, on January 5, 1999. Convened by Linda Nielsen of Nashua, Montana, who is Chair of the Region VIII RegFair Board, the meeting produced numerous suggestions and ideas on new ways to communicate with the small business community, especially in less-populated areas.



- On February 12, 1999 a Business Leaders Roundtable was held in Providence, Rhode Island. Larry Morse, RegFair Board Member from East Providence, initiated the meeting which was held in conjunction with the Rhode Island SBA Advisory Council, one of the most active in the country. Congressman Weygand (D-2<sup>nd</sup> District) attended the Roundtable and discussed the possibility of holding a Congressional hearing on small business concerns in the coming year.
- A Business Leaders Roundtable was held in Topeka, Kansas on March 11, 1999. Due to a strong effort by Alonzo Harrison, RegFair Board Member from Topeka, the meeting brought together leaders in the state small business community. The Kansas Road Builders Association and the U.S. Chamber of Commerce were the major trade associations at the meeting. The home health care agencies discussed HCFA's regulations on the payment system and surety bonds. Staff from U.S. Senator Pat Roberts' office attended and the Capital Journal and Indian Voices provided media coverage.
- A Business Leaders Roundtable was held in Denver, Colorado on April 29, 1999. The SBA District Office and Region VIII Board Members Albert Gonzales and Elaine Demery hosted the meeting, both from Denver. Attendees discussed topics ranging from the number and nature of small business comments received from the area, to increasing outreach efforts in the region. The Roundtable also generated a comprehensive article on the front page of the Business Section of the *Denver Rocky Mountain News*.
- On June 8, 1999, a Business Leaders Roundtable was held in Harrisburg, Pennsylvania, hosted by RegFair Board Members Victor Tucci of New Kensington and Shawn Marcell from King of Prussia. The event generated ideas for outreach to association members, and ideas on how to increase RegFair's exposure in the small business community. The Roundtable also generated interest for the RegFair Hearing held in August in Pittsburgh.

### *Association of the Month*

Another RegFair activity is the Association of the Month program that began in June 1998. The purpose of the Association of the Month program was to bring RegFair into closer contact with the major small business trade organizations and their members to develop an outreach partnership. RegFair provides a new service to the members of these national groups, and the associations provide RegFair with the means to inform their small business members of the program.

To be an Association of the Month, national trade and professional associations are requested to make a concentrated effort to send RegFair information and materials to their state and local affiliates asking that they distribute the information to their small business members. Associations of the Month are also requested to invite RegFair Board Members to speak at their next group meeting or event.

RegFair Board Members are, in return, encouraged to contact the local affiliate of the trade association in their area, so that the local leaders will become familiar with RegFair through that Board Member.

With the help of past Associations of the Month, notably the U.S. Chamber of Commerce with its more than 3 million members, RegFair has reached more than 10 percent of the 25 million small businesses in the United States. RegFair Board Members are already starting to line up their favorite associations to do the honors for the Millennium. A brief synopsis of this year's Association of the Month activities appears in Appendix B.

### *RegFair Report Newsletter*

The *RegFair Report* is a monthly newsletter that presents program and board achievements, success stories, and outreach by RegFair Board Members during the past month. Each *RegFair Report* features the current Association of the Month and briefly describes the featured association's industry and concerns. The *RegFair Report* also includes the program's goals and initiatives for the coming month.

The *RegFair Report* is distributed to all of RegFair's partners, including current and past RegFair Board Members, the Small Business Committees of the House and the Senate, 170 national small business trade associations, previous Associations of the Month, SBA National Advisory Council Members and SBA program areas. Currently, the *RegFair Report* has a distribution of over 4,000.

### *RegFair Information Card*

The RegFair Information Card describes, in plain language, the RegFair Program and the process by which agencies are asked to respond to small business comments, through RegFair. The card was developed to fit into a regular business size envelope for mailings to small businesses and the public. RegFair and its resource partners distribute the card at public hearings, Roundtables, and other small business events.

To date, the card has been sent to all Members of Congress for distribution to their small business constituents. It has also been sent to over 170 national trade associations, and SBA program areas including the Small Business Development Centers, SCORE chapters, and the National Advisory Council. The Office of the National Ombudsman has received excellent feedback on the RegFair Card, and have filled numerous requests for additional cards including requests from the following Members of Congress:

Sen. Peter G. Fitzgerald (IL)

Sen. Byron L. Dorgan (ND)

Sen. Fred Thompson (TN)

Cong. Lucille Roybal-Allard (CA)

Cong. Janice D. Schakowsky (IL)

Cong. Donald Manzullo (IL)

Cong. Earl Pomeroy (ND-at large)

Cong. Robert Menendez (NJ)

Cong. Tom Udall (NM)

Cong. George R. Nethercutt, Jr. (WA)

### *Program Operations / Activities*

#### RegFair Hot Line: 1-888-REG-FAIR (734-3247)

Calls to the RegFair Hotline at 1-888-REG-FAIR have shown significant increases. From an average of only 54 a month in 1997, the average monthly number of calls to the RegFair Hotline over the three years of program operation has grown to 102 per month. Over 3,680 calls have been received by the Hotline in total.

#### RegFair Internet Web Site: [www.sba.gov/regfair](http://www.sba.gov/regfair)

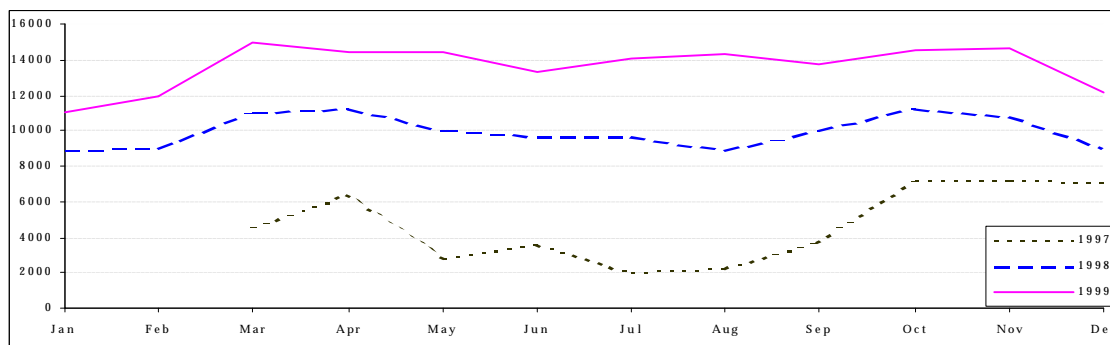
The RegFair Internet website has been a huge success. With almost 300,000 "hits" or visitors to date, the RegFair web site is averaging its highest monthly levels since it was constructed in March 1997.

Web site hits for the 10 months of 1997 that the site was in operation totaled just over 47,000. In 1998, that number almost doubled, increasing by 73,000 to just under 120,000. Totals for 1999 show another increase to over 163,000 and a grand total for the program of over 330,000.

	<i>Total RegFair Web Site Hits</i>	<i>Monthly Average Hits</i>	<i>Total Program Hits to Date</i>
1997	47,032	4,703	47,032
1998	119,614	9,968	166,646
1999	163,487	13,624	330,133

The increase in the average monthly number of RegFair web site hits indicates a significant increase in the number of RegFair web site visitors. In 1997, after operation of only 10 months, the web site garnered a total of 47,000 hits, averaging 4,700 per month. Last year saw a huge increase with nearly 120,000 hits registered, and an average of 10,000 hits per month. In 1999, web site hits grew dramatically to average 14,000 per month.

The web site is currently averaging its highest monthly levels since it was constructed in March 1997. The growth in web site hits is illustrated in the following graph:



### *RegFair Hearings*

RegFair has posted the transcripts of all ten RegFair hearings held in 1999, on the Internet web site. Proceedings of the hearings are available to the small business community, Members of Congress, Federal agencies and the public at large. Small businesses, after reviewing the transcripts, see that businesses in other parts of the country have similar concerns, and this stimulates many business owners to come forward and offer testimony.

Additionally, posting the transcripts allows Federal agencies to review the actual testimony of small businesses and incorporate ways to address their concerns into their internal regulatory enforcement structures. The transcripts also serve as another communication tool for Congress, to see what their constituents are experiencing in the Federal regulatory arena, as well as what recurring enforcement and compliance issues are emerging from the small business community. In the future, RegFair will also post written testimony submitted by agencies and small businesses in conjunction with the public hearings.

### **Working to Pass Regulatory Fairness Legislation at the State Level**

To small business owners, regulations are regulations, whether Federal, state, or local. The layers of regulations and ordinances small businesses must follow make compliance difficult and regulatory fairness all the more important. Through all levels of government, small businesses need fair treatment, compliance assistance, rules that don't conflict, government coordination and government / business cooperation.

As regional RegFair Board Members have interacted with state business leaders and association directors around the country, they have found widespread support for developing legislation at the state level that is similar to SBREFA. As a result, RegFair Board Members have followed up with the state policy leaders who have indicated an interest in establishing state SBREFA-like legislation. The result of these efforts has been the proliferation of efforts to craft and pass state-level legislation.

In 1998, the very first state to enact this type of legislation was Hawaii. Tim Moore, the RegFair Board Member there was asked by the Governor to lead the commission that drafted the new state law. According to Mr. Moore, the regulatory review board has been appointed and has begun the process of creating a mechanism to review proposed regulations as well as to reach out to business owners. Hawaii State agencies have begun to comply with the legislation's cost/benefit analysis requirement.

In addition to cost/ benefit analyses for new regulations, the new law in Hawaii contains the following key elements:

- Covers state and local laws;
- Reviews existing rules as well as newly proposed rules; and
- Creates a small business defender that can represent small businesses in the administrative appeals process.

RegFair Board Member Tom Guthrie assisted in passing Nevada's landmark legislation in 1999. Mr. Guthrie has been working closely with several state lawmakers, the Governor's office and the Nevada SBDC State Director. He is working with the Governor to expand the new legislation by executive order, as legislative sessions occur every other year.

The most recent effort comes from New York State, where Board Member Peter Ruddy has discussed the RegFair Program with New York State Assemblyman Robin Schimminger. The Assemblyman plans to introduce legislation in New York that will "give small businesses a bigger voice in the state's regulatory enforcement process." According to Assemblyman Schimminger, "[m]y bill would establish a Small Business Regulatory Enforcement Fairness Board within the New York State Department of Economic Development's Small Business Division."

Mr. Bobby Clark, RegFair Board Member from Kentucky, led a strong effort in the Kentucky State Legislature. Largely due to Mr. Clark's efforts, the 1998 Kentucky General Assembly passed legislation creating the Subcommittee on Small Business Regulation to study the small business community in the Commonwealth and to define issues uniquely affecting Kentucky small business. From the testimony and proposed legislation presented by members of the Kentucky small business community, the Subcommittee formed nine recommendations that were forwarded to the Interim Joint Committee on Economic Development and Tourism. Recommendation One is *require all state agencies to make small business aware of their rights under the Federal Small Business Regulatory Enforcement Fairness Act of 1996*. Additional recommendations include the creation of a Small Business Ombudsman, a Small Business Advocate and a Small Business Advisory Committee.

At RegFair's Business Leader Roundtable held in Helena, as reported in the 1999 Report to Congress, there was discussion about working towards passing legislation in Montana. Discussion leaders in that roundtable included state trade association leaders and staff of U.S. Senator Burns. Since that time, Linda Nielsen, a RegFair Board Member from Montana has continued to work with state associations and business leaders across Montana, and she hopes for a proposed bill during the next legislative session, in 2001.

Two RegFair Board Members from Pennsylvania have also led state legislative efforts. RegFair Board Member Victor Tucci has met with Governor Ridge's staff in Pennsylvania, who is actively considering

sponsoring legislation. Meanwhile, Fairness Board Member Shawn Marcel has been working with state legislators on the issue.

Mr. Larry Mocha, RegFair Board Member in Region VI and Chairman of the Oklahoma Governor's Conference, has led another small business regulatory fairness effort. Using the Hawaii legislation as a model, Oklahoma Representative Jack Bonny and Senator Jim Maddox introduced the Oklahoma Small Business Regulatory Enforcement Fairness Act, or OSBREFA, in their respective chambers last year. Although OSBREFA made it through both chambers of the Oklahoma State legislature, it ultimately died in conference. Nevertheless, Mr. Mocha is optimistic about its chances for passage in this year's legislative session.

In Rhode Island, RegFair Board Member Larry Morse has led an effort to bring regulatory fairness to the state level. The Rhode Island Small Business Regulatory Flexibility Act (99-H 5688) has been forwarded to the House Corporations Committee. This bill is modeled after legislation enacted in Hawaii last year, and was cosponsored by Representative Brian Patrick Kennedy and Representative Eileen Naughton.

According to Ms. Stella Olsen and Mr. Scott George, RegFair Board Members from Missouri, great efforts are being made to bring a statewide SBREFA into action. Since SBREFA passed at the national level, Ms. Olsen and Mr. George have been invited to meetings with the Missouri Department of Natural Resources-Small Business Compliance Advisory Committee to discuss regulatory issues and how they impact small businesses. According to Mr. George, after Missouri held its first Small Business Congressional Summit in 1999, small business leaders met in a series of focus groups facilitated by State Senators, Representatives, and State Department Directors. In the Regulatory and Environmental focus groups, the two highest ranked recommendations were a state "Regulatory Fairness Act" and a state "Regulatory Fairness Board," and enabling legislation is currently being drafted.

According to John Hexter, Board Member in Cleveland, there has been discussion in Ohio of a state legislative effort. Mr. Hexter is sharing proposed and current legislation from other states with Ohio Representatives and Senators, and will also provide this information to the Government Affairs Council.

In Virginia, Board Member Ann Parker Maust says plans are underway to launch a state legislative initiative similar to SBREFA. The Governor's Small Business Advisory Council at its November 1999 meeting recommended an examination of how the state might implement such legislation and the role the Council might play in that undertaking.

According to Dan Morgan, RegFair Board Member in Nebraska, first round of discussions on state SBREFA legislation is occurring. Nebraska has a state ombudsman office, and small business regulation reform may be included under its auspices.

RegFair Board Members will continue to work at encouraging additional states to introduce legislation that brings regulatory fairness legislation to the state and local level.

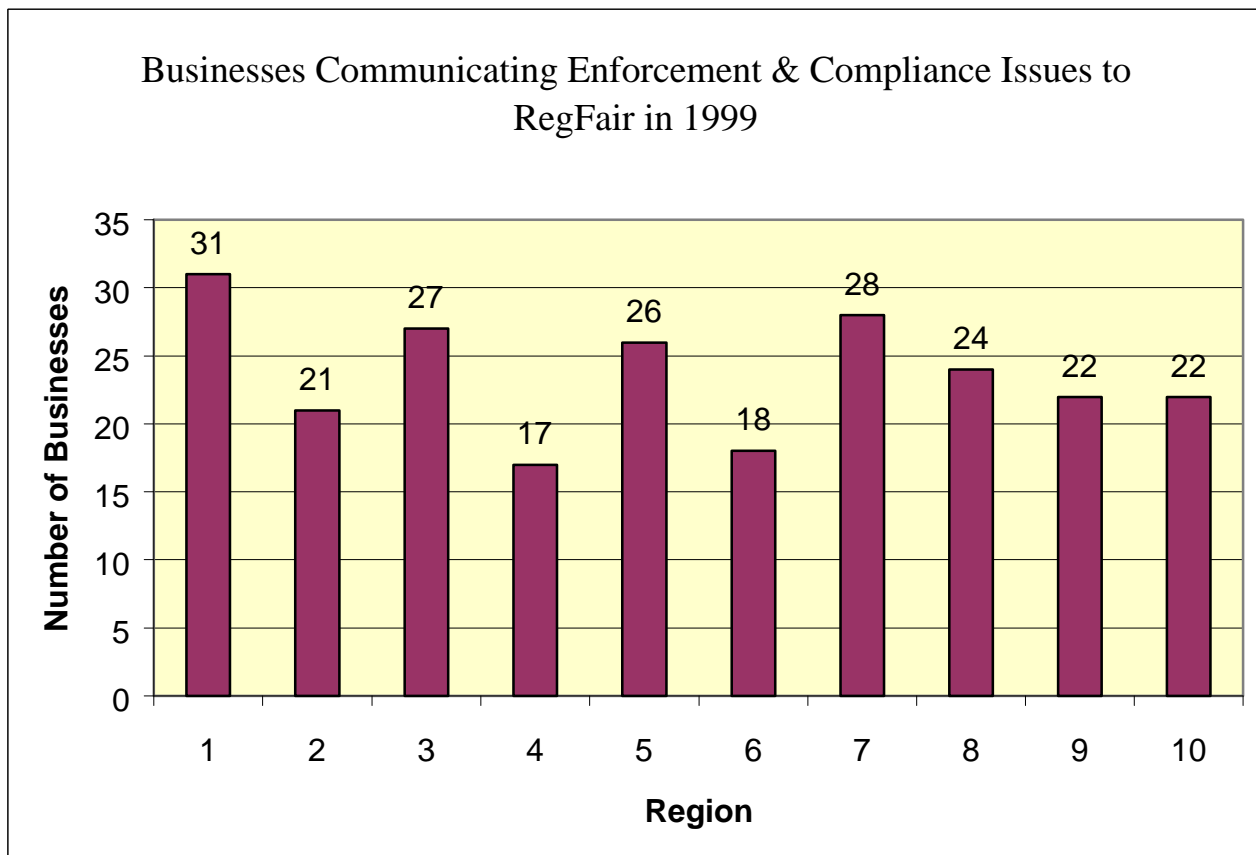
### Appendices:

- A. Small Business Feedback in 1999
- B. Summary of 1999 Associations of the Month
- C. SBA Programs Marketing RegFair
- D. Follow-up of 1997-98 Case Studies
- E. RegFair Public Hearings
  - 1. Hearing Promotion
  - 2. Hearing Planning
  - 3. Attendance and Participation at Hearings
  - 4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings
  - 5. Synopses of 1999 Regional Regulatory Fairness Board Hearings
- F. RegFair Materials
  - 1. Brochure
  - 2. Appraisal Form
  - 3. RegFair Card
  - 4. Board list, map, Roles & Responsibilities and Code of Ethics
- G. Agency comments on 2000 Report
- H. National Ombudsman's Previous Annual Recommendations

## Appendix A:

### Small Business Feedback in 1999

The table below represents the 236 small businesses that provided the Office of the National Ombudsman and the RegFair Boards with their feedback on regulatory enforcement and compliance concerns. The data is broken down according to SBA's geographic regions.



## Appendix B:

### Summary of 1999 Associations of the Month

The American Society of Association Executives (ASAE) served as Association of the Month for February 1999. Washington-based ASAE represents more than 24,600 association professionals, who manage leading trade associations, membership societies, voluntary organizations, and their suppliers. The association also represents 68 allied state or regional societies of association executives. ASAE published an article on RegFair in *GR*, ASAE's newsletter on Government Relations. The National Ombudsman addressed the ASAE Alliance Forum breakfast series for DC-based heads of trade associations. ASAE also posted information on RegFair and a link to RegFair's web site from its site ([www.asaenet.org](http://www.asaenet.org)).

The International Franchise Association (IFA) was RegFair's Association of the Month for January. The IFA represents over 32,000 franchise holders and franchisers. To promote RegFair among its members, the IFA issued a press release and published an article on how to use the RegFair comment process in the December issue of its newsletter, *It's Your Business*. The IFA also undertook a number of ongoing promotional activities, including publication of a feature-length article by the National Ombudsman in *Franchising World*, its bi-monthly magazine, and distribution of RegFair literature at its annual convention in Miami Beach. At its web site, now under revision, IFA posted information about the program and a link to RegFair's web site.

The American Road and Transportation Builders Association (ARTBA) was RegFair's Association of the Month for March 1999. Based in Washington DC, ARTBA has more than 4,000 members nationwide, and State Chapter Affiliates in over 25 states. ARTBA represents to Congress and the Administration, the legislative and regulatory interests of the transportation construction industry. The association promoted RegFair to its membership by publishing an article on RegFair in its monthly magazine, *Transportation Builder*. Additionally, the association invited Tom Guthrie, RegFair Board Member from Region IX, to address the ARTBA Council of State Executives at their annual convention in Las Vegas. ARTBA also posted information on RegFair on their web site ([www.artba.org](http://www.artba.org)).

The Regional Investment Bankers Association (RIBA) was RegFair's Association of the Month for April 1999. RIBA is a national association of regional and independent broker-dealer and investment banking firms that provides information and education to its member practitioners, regulatory and legislative agencies, and the investing public. These firms employ in excess of 13,700 registered representatives in over 1,850 offices throughout the United States that serve a number of client/investors estimated to exceed two million.

The National Restaurant Association served as RegFair's Association of the Month for May 1999. With members representing over 175,000 restaurants nationwide, the National Restaurant Association's influence in the small business community ensures that news of RegFair will reach a majority of the Nation's small restaurants. By attaching RegFair's Agency Appraisal Form to its member newsletter, the National Restaurant Association has been an innovator in getting the word out. An added bonus to partnering with the Restaurant Association this year was its annual trade show held in Chicago in May at which the Office of the National Ombudsman distributed RegFair materials. The show attracted more than 100,000 restaurateurs, suppliers, and others interested in the food service industry.

The U.S. Chamber of Commerce was RegFair's Association of the Month for June 1999. As the world's largest business federation, representing nearly three million companies, 3,000 state and local chambers, and 775 business associations, the Chamber has played a significant role in helping to promote RegFair to the small business community through outreach tailored specifically to the Chamber's strengths in the small business community. As Association of the Month for June, the Chamber published RegFair



information in various newsletters and on its web site ([www.uschamber.com](http://www.uschamber.com)), including a jump site to the RegFair home page. Chamber leadership is continually exploring ways to increase awareness of RegFair and the number of small business comments from Chamber members.

The North American Die Casting Association (NADCA) was RegFair's Association of the month for July 1999. NADCA is the exclusive trade and technical association of the die casting industry, with over 950 members companies in every region of the United States. Over 60 percent of their member companies are small businesses: most have fewer than 100 employees and many are family-owned. NADCA is headquartered in Chicago, and has a Washington office. NADCA published an article on RegFair in the July/August edition of the association's magazine, *Die Casting Engineer*. NADCA also posted information about RegFair on its Internet web site and established a link to RegFair's web site. Joanne Stockdale of the Region VII RegFair Board is an active member of the Northern Iowa Die Casting affiliate of NADCA.

The American Trucking Association (ATA) served as RegFair's Association of the month for August 1999. The American Trucking Association is a federation of over 4,000 state trucking associations, national truck conferences and individual motor carrier companies and suppliers.

The Telecommunications Industry Association (TIA) was RegFair's Association of the Month for September 1999. The Telecommunications Industry Association (TIA) is a full-service national trade organization. Since its origin in 1988, the TIA has grown to a membership of over 900 companies that provide communications and information technology products, distribution and professional services in the United States and around the world. The Association's member companies manufacture or supply virtually all of the products used in global communication networks.

The American Foundrymen's Society (AFS) was RegFair's Association of the month for October 1999. Headquartered in Chicago, the AFS assists over 14,000 individual and 600 corporate members in effectively and efficiently managing the production of castings. Today, there are an estimated 3,000 foundries across the Nation that employ more than 225,000 individuals. Most are small businesses--80 percent employ less than 100 people. To promote RegFair, the AFS published an article on RegFair in *Modern Casting*, the AFS's magazine in November 1999. On the AFS Internet web site, the association posted information on RegFair with a jump site to RegFair's web site.

The Air Conditioning Contractors of America (ACCA) was RegFair's Association of the Month for November 1999. Headquartered in Washington, DC, ACCA represents approximately 9,000 national, state and local members who will be receiving information about the RegFair Program. Regulations covering the venting and disposal of HFC and HCFC refrigerants during installation, maintenance, repair and disposal of residential and commercial air conditioning and refrigeration equipment govern ACCA members. They are also subject to OSHA regulations dealing with health and safety, and ergonomics issues, as well as Department of Labor regulations concerning employment laws, and IRS tax rules. ACCA members were informed about RegFair via information on ACCA's Internet web site ([www.acca.org](http://www.acca.org)), and in its monthly member newsletter, *ACCA News*. In October 1999, Acting National Ombudsman Hatem El-Gabri spoke to ACCA state and local chapter executives in Washington, DC. The ACCA has also invited the Office of the National Ombudsman to design and present a workshop at their annual conference and trade show in February in Albuquerque.

The National Meat Association served as RegFair's Association of the Month for December. The National Meat Association (NMA) is a non-profit trade association for meat packers and processors, as well as equipment manufacturers and suppliers who provide services to the meat industry. Headquartered in Oakland, CA, the association has over 600 members throughout the United States, Canada, Australia and Mexico. The NMA holds an annual conference that features in-depth seminars and informal meetings in a network forum. NMA's 54th Annual Convention will be held in San Francisco, California, February 17-19,

2000 and RegFair plans to participate. In addition to its annual meeting, NMA holds specialty seminars and workshops throughout the year and across the country to provide information and advice to its members on industry issues and concerns. The Association also holds a summer conference and board meeting, and a biennial exposition for industry technology, equipment and services. RegFair Board Members will be informed about the Association and its members through the NMA's weekly newsletter called *Lean Trimmings/Herd on the Hill* and Internet web site.

## Appendix C:

### **SBA Programs Marketing RegFair**

#### *Office of Small Business Development Centers*

In 1997, the National Ombudsman spoke to SBDC Directors at the Field Management Meeting. This was followed-up in early 1999 with another presentation by the National Ombudsman to the SBDC's Regulatory Committee. The Committee members were very enthusiastic about RegFair and have since shown a strong interest and commitment to more active involvement in regulatory fairness and in educating their small business clients about RegFair.

#### *Investment Division*

Congress created the Small Business Investment Company (SBIC) Program to fill the gap between the availability of venture capital and the needs of small businesses in start-up and growth situations. SBICs, licensed and regulated by the SBA, are privately owned and managed investment firms that use their own capital, plus funds borrowed at favorable rates with an SBA guarantee, to make venture capital investments in small businesses.

Virtually all SBICs are profit-motivated businesses. They provide equity capital, long-term loans, debt-equity investments and management assistance to qualifying small businesses. Their incentive is the chance to share in the success of the small business as it grows and prospers.

The Investment Division is working to educate the SBICs about the Regulatory Fairness Program. This initiative by the Investment Division will have primary and secondary dividends. First, many SBICs are themselves small businesses, who are covered by SBREFA and eligible to comment on enforcement or compliance activities. Second, SBICs have a direct interest in regulatory enforcement fairness for the small businesses in which they invest. Several SBIC owners have already shown interest in the Regulatory Fairness Program, and their feedback is expected to increase. An unfair Federal regulatory environment has a negative impact on business growth and financial health. To succeed and maximize the return on SBIC investments, small businesses need a fair regulatory environment. SBICs can help small businesses recognize that they are stakeholders in the Regulatory Fairness Program and that their participation will greatly enhance the impact of the Program in improving regulatory enforcement and compliance for all small businesses.

#### *8 (a) Program & Small Disadvantaged Businesses (SDB)*

SBA's 8(a) and SDB Programs are intended to help small businesses be successful. Companies just starting or in a growth stage, can benefit from the wide-range services offered—support for government contractors, access to capital, management and technical assistance, and export assistance—just to name a few. They accomplish their goal by building community-based small businesses, which in turn revitalizes neighborhoods, creates jobs, and encourages economic growth. SBA uses a number of assistance intervention tools, ranging from contract support to low-interest loans for site acquisition, construction, and the purchase of new or upgraded equipment.

SDB started including the RegFair Program information in the marketing material it sends to small businesses. This direct contact with small businesses will help educate small businesses about their regulatory fairness rights and will increase the small business feedback that the National Ombudsman and RegFair Boards receive.

## *HUBZone*

The HUBZone Empowerment Contracting program provides Federal contracting opportunities for qualified small businesses located in distressed areas. Fostering the growth of these Federal contractors as viable businesses, for the long term, helps to empower communities, create jobs, and attract private investment.

The HUBZone Program is including the RegFair Card in the marketing materials they send to small businesses.

## *Office of Field Operations*

The Office of Field Operations is the representative for the SBA field offices at headquarters. The office provides: policy guidance and oversight to regional administrators and district directors in implementing agency goals and objectives, and in solving problems in specific operational areas; establishes and monitors performance goals for the districts; serves as liaison and expedites issues for the regions and districts in dealing with Headquarters, coordinating presentation of field views; and organizes reviews of field offices.

Field Operations recently met with the District Directors and Branch Managers and provided an updated briefing on the Regulatory Fairness Program, what it offers their small business customers and how they can help inform local small businesses about their rights to Regulatory Fairness.

Field Operations is working with each district and branch office to get them to include RegFair Cards in the mailings that the offices send out to small businesses. The card is light weight and designed to be stuffed in a standard business envelope. By enclosing the card in existing mailing the field offices will help spread the word about RegFair at negligible costs.

## *Office of Equal Employment Opportunity & Civil Rights Compliance (OEEO&CRC)*

With regard to small businesses, the OEEO&CRC works to fairly and objectively ensure that agency practice and policy prohibit discrimination on the bases of race, color, sex, age, religion, disability, national origin and reprisal for recipients of SBA financial assistance. OEEO&CRC is distributing RegFair brochures to all of the area offices for distribution to small businesses by OEEO&CRC staff.

## *Office of Financial Assistance*

The Office of Financial Assistance oversees many of SBA's small business loan programs. They work directly with private lenders and certain small business borrowers. Financial Assistance will provide their lenders with information on the Regulatory Fairness program. They will also provide the same information to small businesses borrowers, on SBA serviced loans.

By educating SBA lenders on the RegFair Program and encouraging them to distribute the cards at banks, we expect small business bank customers will quickly learn about their rights to regulatory fairness and will increase their utilization of RegFair.

## *The Business Adviser*

The SBA sponsored Business Adviser initiative has done a tremendous job bringing together in one location the online resources of Federal and state governments that are relevant to small businesses. The Business Adviser has integrated the RegFair web page into its site so that millions of small business visitors each year

will be directed to RegFair web site if they have any Federal regulatory enforcement concerns. Small businesses may visit their web site at <http://www.business.gov>.

### *SBA Help Desk*

The Help Desk is SBA's one stop shop for small business information. The Help Desk answers a wide range of questions, provides informational materials, and makes referrals to appropriate Government program. The Help Desk staff have all been briefed on RegFair and they are now fielding questions from small businesses with regulatory enforcement and compliance problems, providing RegFair literature, and referring small business owners to the Office of the National Ombudsman for further assistance.

## Appendix D:

### Follow-up of 1997-98 Case Studies

Derived from written small business comments, testimony at RegFair hearings, and the experiences of the RegFair Board Members, the National Ombudsman's first Report to Congress on Regulatory Fairness identified four common themes or perceptions in small business community. The report presented the individual experiences of specific small businesses as case studies to illustrate these common perceptions.

The four themes identified in the National Ombudsman's first annual Report to Congress were:

- Agencies change their rules in the middle of the game;
- Agencies disregard economic or other consequences of their actions on small businesses;
- Small businesses often get ensnared in conflicting regulatory requirements when Federal agencies' jurisdictions overlap; and
- Small businesses fear agency retaliation.

In the 1999 and 2000 Reports to Congress, these themes are revisited by reviewing the as yet unresolved case studies illustrating them. Presented below is the current status of these small business comments. Significantly, two years after these comments were first presented to Congress; three of the eight issues are not yet resolved.

#### *Changing the Rules In the Middle of the Game*

##### Original Case Study

Ms. Kathy Diaz, co-owner and founder of Monroe's Restaurants in Albuquerque, New Mexico, testified at the 1997 RegFair hearing in Region VIII, held in Albuquerque. In her testimony, Ms. Diaz told about Monroe's Restaurants experiences with the IRS after a change in personnel at that agency's district office.

Monroe's Restaurants employs approximately 80 workers, and has been established in its community for over 20 years. According to Ms. Diaz, her company had been working with the IRS to develop a payment plan, which the restaurant could adhere to, and which would work well for both the IRS and her company. However, the agent Ms. Diaz was working with retired and a new agent took over her case.

The new agent informed Ms. Diaz that he had decided the previously written agreement was null and void, that it was canceled, and that additional penalties and interest were due. According to Ms. Diaz, the cancellation of her previous agreement and the addition of penalties and interest were completely at the discretion of the new agent. This decision began a 5-year quest by Ms. Diaz's business for relief.

According to Ms. Diaz, the IRS agent stated on numerous occasions that he will "shut the business down" and has been verbally abusive to her, her employees and even some of her customers.

Recently, Ms. Diaz informed the National Ombudsman that the company has succeeded in having a new agent assigned to its case. However, she reports that the debts incurred over the past 5 years through this process have grown so large that her business may not survive.

##### 1999 follow-up

In following up with Ms. Diaz for the 1999 report, she stated that, after the hearing, her case was assigned to a new office. However, when she and her attorney went to the new office to meet with the agent, she discovered that her case had been reassigned to the same agent who had been transferred to that office.

Ms. Diaz reports that at the meeting the agent was extremely upset and agitated about her testimony at the RegFair hearing. According to Ms. Diaz, the agent said he was sick and tired of them and just wanted to close them down, and when asked why he was so upset, had them physically removed from the building.

According to Ms. Diaz, another IRS agent saw this situation developing, and as a result, the agent was again removed from her case. The restaurant is in the process of filing a third compromise agreement request (this submission, according to Ms. Diaz, is exactly like the previous two that were submitted and rejected by the previous agent). This compromise agreement request includes the company's petition for a reduction in the amount of the penalties and interest originally given. The company is requesting these reductions under SBREFA, as Monroe's is a small business. Nevertheless, to protect the company, Monroe's Restaurants has filed Chapter 11 bankruptcy.

Throughout this situation, the company has continued making payments to the IRS and has almost paid off the principal debt. However, according to Ms. Diaz, the penalties and interest on the debt, and the \$50,000 the company has spent in legal and other fees has created such a financial hardship for Monroe's that she doubts the Restaurants will ever recover.

If Monroe's Restaurants does go out of business because of this situation, 80 employees will be out of work. According to Ms. Diaz, the agent that had been removed from her case has since been promoted.

### 2000 follow-up

Monroe's Restaurants is still in business. Previously, the business had been paying \$5,000 per month to pay off the IRS debt. However, the agent who had Ms. Diaz and her attorney physically removed from the building, also ended that repayment plan. When the restaurants filed for Chapter 11 bankruptcy, the previous debt was assigned to the Diaz's, personally.

For the business, agreement has been reached, and a letter and check for \$64,000 has been paid to the IRS. Legally, Monroe's Restaurants will not owe the IRS further penalties.

The Diaz's submitted another offer of compromise to the IRS in March 1999. The company received a letter a few months later stating that the compromise could be processed, the case would be assigned to another agent, and the company would be contacted by the 3<sup>rd</sup> of July.

However, according to Ms. Diaz, the agent never contacted them, and Ms. Diaz and her attorney made contact only after repeated calls and letters. Ms. Diaz reports that during the week of November 7, 1999, when contact was finally made with the local IRS office, she was told by an office supervisor that because their compromise was complicated, it needed to be signed off on by a higher level official. According to Ms. Diaz, the office supervisor told her that there were only two officials available, and they were given the option of having their case transferred to another office.

Ms. Diaz was reluctant to transfer her case, as the new office could be anywhere, and she would have to travel there, incurring additional expense. She has since decided to transfer the case, simply to move it toward resolution.

The original amount owed to the IRS was approximately \$195,000. Monroe's had paid over \$90,000 in installments under the first compromise agreement, by the time that plan was abruptly ended by the first agent.

Since the debt was assigned to the Diaz's, they have been paying \$500 per month, plus their tax refund of approximately \$2,000 per year. Ms. Diaz estimates that they have spent approximately \$75,000 in attorney's fees on this situation (she has taken on a second job to help pay the penalties and attorney's fees).

She estimates that a total of \$150,000 of the original amount of \$195,000 has been paid to the IRS, so far. However, according to Ms. Diaz, penalties and interest on the debt were accruing as they awaited contact from the IRS after submitting their fourth compromise agreement, and she believes they have increased the debt to \$350,000.

Ms. Diaz is still concerned that the IRS will demand that she resubmit the latest compromise agreement because of the amount of time that has passed since its original submission. She also stated that had it not been for the Office of the National Ombudsman, her Congressman, and the RegFair hearing, she would probably not still be in business today.

Finally, the Department of the Treasury that the former IRS agent is under investigation has informed Ms. Diaz.

Because Ms. Diaz felt that the IRS agent who she feels began this entire situation retaliated against her business, a copy of the 1999 Report Case Study was sent to the Inspector General of the U. S. Department of the Treasury. We received an internal memo from the Department assigning the case to the Western Region Inspector General.

### *Agencies Disregard the Economic or Other Consequences of their Actions on Small Businesses*

#### Original Case Study

The first annual Report to Congress on Regulatory Fairness presented the belief of some small businesses that agencies do not appreciate the sometimes severe effects of their regulations and actions on small businesses. This belief was illustrated by the comment from Mr. Nolan Woods, President of Red Woods Outfitters, in Pollock, Idaho. Mr. Woods chose to fully disclose his identity and that of his small business for the report.

Red Woods Outfitters is a jet boat outfitter company that has worked out of Riggings, Idaho on the Snake River in Hells Canyon for over 19 years. The company has no employees; Mr. Woods runs the business himself as his only means of supporting his family.

In July 1994, the U.S. Department of Agriculture (USDA) adopted final rules governing the Hells Canyon National Recreation Area Federal Lands. These new regulations, as adopted by the local Forest Supervisor, established Forest Plan Amendment #20, the Wild and Scenic Snake River Outfitter Environmental Assessment. The plan set guidelines for motorized and non-motorized rivercraft in that area.

Implementation of that environmental assessment changed the operation of Red Woods' special-use permit. The plan effectively reduced the number of days that Red Woods could operate its jet boats each summer from 70 to 9 and established destination limits—limits on the areas of the river they could access. These rulings were appealed by Mr. Woods and the two other power boat outfitters in the area.

The Deputy Regional Forester for the Pacific Northwest Region, who was the appeals officer, ruled that the environmental assessment did not support destination limits, and so struck down that decision, but upheld the decision to amend the special use permits. This decision will severely affect the financial stability of the company.

#### 1999 Follow-up

Red Woods Outfitters is still in business, but is still contesting the Forest Service. According to Sandra Mitchell, Executive Director of the Hells Canyon Alliance, a group that represents many outfitters in Hells Canyon including Red Woods. Although the destination limits were struck down, the decision to amend the special use permits was upheld, effectively reducing the number of days that Red Woods Outfitters can operate.

Under the new decision, Red Woods' allocation amounts to only 21 percent of the season, or 15 days between May 1 and Labor Day. Although tours on the Scenic River from Mondays through Thursdays do not count against their allocation, Fridays through Sundays—the big days for tours on the river—do count against it. Additionally, the allocation order states that Red Woods may fish on the Wild River only on Monday, Tuesday, and Wednesday of every other week. This is a real problem according to Ms. Mitchell, because the Wild River is the biggest tourist attraction in Hells Canyon.

Red Woods estimates losses of \$6,000 this year, and about \$10,000 per year over the past two years in lawyer fees. Red Woods gross annual earnings are about \$38,000. At present Red Woods is still working with the Forest Service, which regulates the allocations, and they have initiated a lawsuit against the Forest Service which is due to be heard in the March, 1999.



According to the USDA's response to the National Ombudsman's draft 1999 Report to Congress, Forest Service personnel continues to work with the outfitters. According to the agency, an informal review indicated to it that "the outfitters are doing about the same amount of business as before. Annual revenue of outfitters on the Snake River has remained level. In fact, some outfitters have been investing in bigger and faster jet boats to service their clientele." This response did not address Red Woods Outfitters, specifically.

## 2000 Follow-up

In following up with Sandra F. Mitchell, Executive Director of the Hells Canyon Alliance, for the 2000 Report to Congress, Red Woods has just finished its second year of restricted "motorized days" as imposed by the Forest Service. Their case against the Forest Service is still in litigation, with a final decision expected in January.

The Service has completed a usage survey of the number of users of that section of the river to determine whether usage has increased since the new rules were put into effect. The completed survey is expected to be available in February or March of 2000.

According to Ms. Mitchell, over the past two years there has been no increase in non-motorized craft use of the waterway as a result of the limitations on motorized craft under the new regulations. Ms. Mitchell hopes this result will lead the Forest Service to realize that there is no need for the regulations, and that they will either be changed by the Service, or struck down in court.

## *Small Businesses get ensnared in Conflicting Regulatory Requirements when Federal Agencies' Jurisdictions Overlap.*

### Original Case Study

A small business comment on behalf of Russian and East European Partnerships, Inc. by Kenneth Fortune, President, and testimony at the RegFair Board hearing in Charlotte, North Carolina from Danny Cooper, Vice President of Operations also illustrates this theme. Mr. Fortune chose to fully disclose his identity and that of his small business.

Russian and east European Partnerships, Inc. (REEP) is a New Hampshire-based small business that specializes in training and training support programs. The company has completed a number of U.S. Government contracts.

In September 1995, the Department of Defense (DOD) Contracting Office issued a solicitation for a contract at Fort Bragg, North Carolina. According to REEP representatives, the solicitation information received by the company included an outdated Wage Determination sheet.

A Wage Determination, or minimum wage, for each contract is required when a U.S. Government contracting agency issues a service contract which is governed by the requirements of the Service Contract Act. According to Mr. Fortune, this is where the problems between the Department of Defense and the Department of Labor (DOL) begin.

According to Mr. Fortune, the Department of Defense Contracting Office requires the process of establishing wage rates (called "conformance") to begin within 30 days of the origination of a contract. However, the Department of Labor—the agency that actually does the "conforming"—requires the process to begin before work on the contract has started, and places responsibility for this on the Department of Defense, not on the contractor.

According to Mr. Fortune, since REEP did not know it had an outdated Wage Determination sheet, the company completed it and sent in the package. The Department of Defense Contracting Office informed REEP that all positions in the contract had previously been conformed by the Department of Labor as Clerk I and Clerk. The company assumed everything was fine and officially began work on the project in February 1996.

According to the company, repeated inquiries over the next six months to the Department of Defense Contracting Office for a finalization of the DOL conformance went unanswered. In September 1996, a new DOL wage determination was issued for Fort Bragg, and wage rates increased. According to Mr. Cooper, the minimum wage for an instructor increased from \$8.10 per hour to \$16.50—a 104 percent increase.

When the Department of Labor issues a new wage determination in such cases, it also issues a conformance notice to the Department of Defense Contracting Office. This authorizes the Department of Defense to amend the contract with REEP, and allows REEP to submit a claim for additional payment to cover the wage increases. However, in this case, DOD never received a conformance notice from the Department of Labor, and refused REEP's claim for a contract increase to cover the wage increase. According to Mr. Cooper, DOD refused to pay the claim based on a lack of notification from DOL.

According to Mr. Cooper, in early August, 1997, the Department of Defense refused to meet with REEP and DOL to attempt to resolve the matter. In late August, DOL issued a form WH-56 that required REEP to pay over \$229,000 in back wages to its employees, implying that REEP was trying to avoid paying its workers legal wages. But, according to the company, they contacted the Department of Labor more than forty times over a year and a half in an attempt to resolve this situation. A negotiated settlement for the contract period up to September 1997 fell apart when the Department of Defense refused to pay its obligation.

Finally, on November 4, 1997, the Department of Labor of the conformed wage rates informed REEP, but no explanation was given as to how they were derived. On November 12, 1997, REEP appealed the wage rates determined by the Department of Labor, based on their assessment of the prevailing wages.

According to both Mr. Cooper and Mr. Fortune, the Department of Labor and the Department of Defense were working against each other, rather than trying to develop a cooperative method of resolving the situation. To date, the issue has cost REEP more than \$10,000 in expenses and legal fees.

This comment is under review by the Department of Defense and the Department of Labor.

### 1999 Follow-up

For the 1999 report to Congress on Regulatory Fairness, REEP was contacted once again. According to Mr. Kenneth Fortune, President of REEP, after he testified at the RegFair hearing in Charlotte, his Congressman became interested in his experience and was able to bring DOL and DOD together for a discuss of the matter.

On February 17, 1998, the two agencies met with REEP representatives and the Congressman. At the meeting, the issue of payment of the back wages was discussed and a working solution was reached whereby REEP would complete and re-file the forms for each of the employees that had been working with the contractor, essentially re-billing for hours that the employees had worked but for which they had not been paid.

REEP had 30 days to fill out the forms and return them to DOD. DOD also had 30 days to sign off on the back wages, and submit the forms to DOL, which they did, on time, in April 1998. The forms submitted to DOL confirmed that DOD was prepared to pay \$198,000 in back wages to REEP employees, upon notification by DOL to do so.

In late October, six months after DOL received the information; REEP received call from its Congressman informing the company that DOL had finally made its decision.

The next day, the company discovered that DOL had denied the new conformance request and would not release the funds for the back wages. According to DOL, it was because REEP had not submitted required materials and had not followed the guidelines for the materials that were submitted.

This means that REEP will be required by the Department to pay the back wages of over \$198,000, plus an additional amount that was accruing over the six months DOL took to issue a response in this case.

According to REEP, their paperwork was in order when submitted to DOD, but DOD apparently failed to submit all of the paperwork to DOL. Now, despite the fact that it took 6 months for DOL to respond on this matter, REEP states it has only 20 days to appeal this "final" ruling.

A more serious allegation is that, according to Mr. Fortune, REEP's attorney was told by a DOL representative that there had been the possibility of a negotiated settlement, but because of the pressure put on by REEP's Congressional representatives and the RegFair Program, DOL was no longer willing to negotiate a settlement in this case.

In addition to spending approximately \$44,000 to resolve this matter, REEP has experienced other detrimental economic effects as a result of DOL's wage determination. Nevertheless, Mr. Fortune is thankful that DOL did not assess further fines on his company and he thinks this is largely due to his comment through RegFair and the Congressman's active role in the resolution.

The sequence of events presented here by REEP corresponds with those described in the Department of Labor's interim response to RegFair on this comment, which was received by the National Ombudsman in early December 1998, including the fact that although REEP requested a meeting with the Department in December 1997, the meeting did not take place until February 17, 1998.

However, according to the Department, REEP did not follow the guidance of DOL either in the February meeting or in the conformance guideline booklet they were sent to submit proposed conformed wage rates. Instead of comparing the classifications to be conformed to wage rates for comparable classifications that were already conformed, REEP simply proposed an 18 percent increase for all of the proposed conformed classifications.

As a result, DOL's denial of the second conformance of wages submitted by REEP through the DOD was based on three things: 1) the absence of information to support or justify the lower wage rates used; 2) the resulting incompatibility of classifications for comparison to arrive at wage determinations; and 3) the inability to use indexing which requires conformed classifications.

According to the Department, this left it "no choice but to use the materials submitted for conformance in December 17, 1997. This also left REEP in the preexisting situation of owing back wages." This comment is pending review by an Administrative Law Judge within the Department.

### 2000 Follow-up

For the 2000 Report to Congress on Regulatory Fairness, REEP was contacted once again, and according to Mr. Alan Prince of REEP, nothing has happened in the last 12 months with their appeal, despite the fact that the contract in question was completed over a year ago.

The appeal is still with the DOL Administrative Review Board and REEP's legal counsel is still trying to work with both DOD and DOL. According to Mr. Prince, the DOD has been very helpful and supportive of REEP, and the company has been awarded several new contracts with the DOD that have been smoothly implemented. In all, Mr. Prince estimated that REEP's legal fees to date on this issue are approximately at \$100,000.

## Appendix E:

### **RegFair Public Hearings**

#### *1. Hearings Promotion*

Over the past three years, the hearings planning process has been improved by emphasizing grassroots publicity of these events. Once a hearing site is selected, hearing flyers, press releases and media alerts are sent to each regional RegFair Board Member, with the request that they use the materials to aggressively publicize the hearing. Board Members are also requested to contact local associations and ask the leadership and their members to participate. The working relationships that have been developed with the Associations of the Month (AOM) are also utilized to build awareness of the hearing process and increase attendance.

The RegFair hearing flyer is an effective promotional tool. It is distributed throughout the small business community to Chambers of Commerce, trade associations and other small business organizations, and is posted in public areas where small business owners can view them. The flyer is also published in local newspapers, included in associations' newsletters. RegFair Board Members are encouraged to contact all local media, to further enhance general awareness of the hearing and the RegFair Program.

The SBA Communications Director of each hearing region, and the SBA District's Public Information Officer, are also informed of the hearing and the need for promotion. They are encouraged to use their media contacts and resource partners' network. Local SBA staff also work with board members to set up media interviews and encourage feature articles.

Approximately 175 national small business trade associations are also notified via facsimile about each public hearing. They are asked to urge their members in the region to participate, as RegFair Hearings are a major opportunity to comment directly on the regulatory enforcement activities of the Federal agencies that regulate them. Most associations are very receptive to the RegFair Hearings, supplying the names of members who wish to offer testimony in each area. RegFair staff initiates contact with each interested member to provide information and details.

SBA Small Business Development Centers (SBDCs) are also informed of each RegFair Hearing, and are asked to invite their small business clients. SBDCs are a key partner of the Small Business Administration, and are a major distributor of Federal enforcement and compliance guidance information to the small business community.

National Advisory Council (NAC) members and delegates to the 1995 White House Conference on Small Business are also notified about upcoming RegFair Hearings in their areas. Both groups are invited to attend and participate in the hearings, and offered the opportunity to address the group, and invite colleagues to attend to testify about their regulatory enforcement experiences.

Finally, Federal agencies covered by Section 222 of SBREFA are notified about every hearing. Some agencies, such as the Environmental Protection Agency, Internal Revenue Service, Occupational Safety and Health Administration, Departments of Labor and Transportation send representatives to many of the hearings regardless of whether they are participating at the hearing. It is encouraging that agencies are willing to attend to hear the comments and concerns of small business, although they are not the featured agency.

Given the information flow among these groups, their counterparts, and local small business organizations, approximately 600 key players in the small business community are notified about each hearing.

Media coverage of the hearings is also growing, in large part due to the efforts of the RegFair Board Members and SBA regional and district staff. While radio or television coverage was evident at eight of the hearings this year, all ten hearings received press coverage in at least one major newspaper or business publication.

## *2. Planning RegFair Hearings*

RegFair hearings are held annually in each of SBA's ten regions of the country. RegFair hearings are designed to give small businesses a voice to address matters that concern them and to express their views on the enforcement and compliance activities of the Federal agencies that regulate them. They also provide a means through which agencies may address specific issues identified in small business comments or general matters of concern to small businesses. The hearings also provide the Office of the National Ombudsman and the RegFair Boards the opportunity to ascertain which agencies are genuinely embracing the principles of SBREFA and RegFair, and those that are not. These hearings promote an important dialogue among the agencies, small business owners, RegFair Board Members and the Office of the National Ombudsman.

The hearings are also one of the major vehicles by which the National Ombudsman and RegFair Boards obtain feedback from the small business community on the regulatory enforcement environment. They are well publicized and attended.

The RegFair hearings are held throughout the country; in large cities and small towns, in urban and rural areas. Hearing locations are rotated among geographic regions and economic sectors within each region, so that small businesses in every area of a region have an opportunity to participate. The effect of rotating this year's hearings resulted in an increase of participation from agricultural, livestock and rural service industries, as well as from associations that represent those interests.

Federal agencies covered by Section 222 of SBREFA are asked to participate in the hearings. At each hearing, representatives from two agencies give the status of implementation of the recommendations from previous National Ombudsman's Reports to Congress, and answer specific small business questions or concerns raised at the hearing. Agencies also address specific regulatory enforcement issues affecting small businesses in the region. The RegFair Board Members and the Office of the National Ombudsman may question agency representatives, and small business owners share their perspectives and perceptions.

The RegFair Boards and the Office of the National Ombudsman carefully choose agencies invited to RegFair hearings by reviewing the concerns and priorities of small businesses in the area. The Office of the National Ombudsman also obtains input from members of Congress as well as from small business trade associations.

Transcripts of each hearing are available on the Internet, usually four to six weeks after the event. By posting the transcripts on the Internet, Congress, the media, Federal agencies and the public have access to the unfiltered opinions and experiences of small businesses across the country.

At the hearings, agencies inform RegFair Board Members and the Office of the National Ombudsman about what they are doing for small businesses, generally. RegFair Board Members and the Office of the National Ombudsman often take this unique opportunity to delve beneath the surface of an issue and request that agency representatives address the specific perceptions of small businesses.

For the 1999 hearings, the Office of the National Ombudsman also requested advance copies of the featured agencies' testimony so that RegFair Board Members and the National Ombudsman have an opportunity to

review it before the hearing and compare testimony with the small business comments addressing agency enforcement actions.

Agencies offering testimony at the 1999 RegFair hearings were requested to provide a status report on their implementation of the ten recommendations contained in the National Ombudsman's 1999 Report to Congress, or their plans and timelines for implementing the recommendations.

### 3. Attendance and Participation at Hearings

As shown in the following chart, in 1999 over 650 people attended the hearings, and nearly 140 small businesses testified before the RegFair Boards and the Office of the National Ombudsman on specific agency enforcement action ranging from the environment and safety procedures to immigration and health care. The Office of the National Ombudsman is continually striving to improve the quality of the public hearings and will raise the bar of agency accountability. Beginning with the 2000 public hearings, all participants will be provided a copy of the recommendations that are the focus of the agency's testimony. This suggestion, made by a RegFair Board Member, would help those small businesses testifying at the hearings to frame their comments concerning the agency which has taken an enforcement action against them in light of the agency's responses to the recommendations.

The following chart shows agencies that were invited and those that offered testimony at the 1999 RegFair hearings. The *Agencies Attending* column indicates hearings to which agencies sent a representative to address specific small business concerns although it was not testifying. The chart also identifies agencies discussed by small businesses in their testimony.

<i>1999 RegFair Hearings</i>						
<i>Date</i>	<i>Region</i>	<i>Location</i>	<i>Agency Invited</i>	<i>Agency Testified</i>	<i>Agencies Attending</i>	<i>Agency Named In Testimony</i>
3/4/99	6	Little Rock, AR	Customs, Commerce	Customs, Commerce	IRS, EEOC, EPA, DOT/FRA	IRS (2), EPA, HCFA, DOL, OSHA
3/12/99	9	Las Vegas, NV	IRS, OSHA	IRS, OSHA	NONE	SBA (2), EPA, HCFA, HUD, OSHA, SEC
5/11/99	7	Omaha, NE	USDA, INS	USDA, INS	OSHA	EPA(4), INS(4), USDA(4), OSHA(3), SBA, HCFA
6/11/99	4	Louisville, KY	DOL, EPA	DOL, EPA	OSHA, IRS	EPA(2), HCFA(2), SBA(2), OSHA(2), USDA, DOL, IRS, SSA, COMMERCE, SEC
6/24/99	1	Hartford, CT	HCFA, EEOC, GSA	HCFA, EEOC	EPA, IRS, OSHA	HCFA(3), SBA(3), OSHA(2), COMMERCE, GSA, DVA
7/7/99	10	Portland, OR	HCFA, COMMERCE	HCFA, COMMERCE	IRS, OSHA, DOL, DOT/FRA	EPA(3), HUD(2), IRS(2), SBA, HCFA, OSHA, DOT
8/4/99	8	Casper, WY	USDA/FOREST SERVICE, SBA	USDA/FOREST SERVICE, SBA	IRS, DOT, DOT/FRA, FAA	OSHA(3), HCFA(3), DOL(3), EPA(2), IRS, SBA, CPSC, EEOC
8/19/99	3	Pittsburgh, PA	DVA, OSHA	DVA, OSHA	IRS, EPA, DOL, DOT/FRA	IRS(5), SBA(4), EPA(3), OSHA(2), USDA(2), HCFA(2), INS, SEC, DOL
9/9/99	5	Madison, WI	FCC, FDA	FCC, FDA	IRS, DOL, FAA, EPA, OSHA	HCFA(4), SBA, FCC, USDA/FS
9/13/99	2	Buffalo, NY	HCFA, HUD	HCFA, HUD	IRS, OSHA, DOL, DOT/FRA	EPA(3), IRS(2), HUD(2), SBA, OSHA, DOT/FRA, HCFA

In only one instance did the two differ: in Region I, the General Services Administration was invited to testify but declined. The Health Care Financing Administration was then requested, and did offer testimony on short notice.

Although a number of agencies sent representatives to hearings throughout the country, the tables below show the agencies that were invited to testify at each hearing held in 1997, 1998 and in 1999, and the agencies that attended and offered testimony.

<i>1997 RegFair Hearings Federal Agency Participation</i>					
<i>Date</i>	<i>Region</i>	<i>City</i>	<i>Invited Agencies</i>	<i>Presenting Agencies</i>	<i>Notes</i>
5/28/97	8	Denver	OSHA, EPA	OSHA, EPA	
6/20/97	9	San Francisco	IRS, USDA	IRS, USDA	
8/5/97	6	Albuquerque	INS, FCC	FCC, OSHA	1
8/21/97	10	Seattle	EPA, FDA	EPA, FDA	
9/25/97	2	New York	INS, SEC	INS, SEC	
10/27/97	1	Boston	IRS, FDA	IRS, FDA	
11/3/97	7	Kansas City	USDA, DOL	USDA, DOL	
11/17/97	4	Charlotte	FERC, FCC	FERC, SBA	2
12/1/97	3	Philadelphia	DOL, DOT	DOL, DOT	
12/4/97	5	Chicago	INS, SEC	OSHA	3

<i>1998 RegFair Hearings Federal Agency Participation</i>					
<i>Date</i>	<i>Region</i>	<i>City</i>	<i>Invited Agencies</i>	<i>Presenting Agencies</i>	<i>Notes</i>
4/6/98	9	San Jose	FCC, EPA	FCC, EPA	
4/20/98	8	Salt Lake	DOL, OSHA	DOL, OSHA	
5/1/98	6	Tulsa	IRS, INS	IRS, INS	
6/8/98	7	St. Louis	USDA, HCFA	SBA	4
6/22/98	1	Augusta	IRS, OSHA	IRS, OSHA	
6/25/98	10	Boise	HCFA, DOI	HCFA, DOI	
8/10/98	5	Cleveland	DOT, EEOC	DOT	5
8/21/98	4	Nashville	DOC, HUD	NONE	6
9/15/98	3	Richmond	HCFA, HUD	HCFA, HUD	
9/18/98	2	Long Island	IRS	IRS	

*1999 RegFair Hearings  
Federal Agency Participation*

<i>Date</i>	<i>Region</i>	<i>City</i>	<i>Invited Agencies</i>	<i>Presenting Agencies</i>	<i>Notes</i>
3/4/99	6	Little Rock	Customs, Commerce	Customs, Commerce	
3/12/99	9	Las Vegas	IRS, OSHA	IRS, OSHA	
5/11/99	7	Omaha	USDA,INS	USDA,INS	
6/11/99	4	Louisville	DOL,EPA	DOL,EPA	
6/24/99	1	Hartford	GSA,HCFA,EEOC	HCFA,EEOC	7
7/7/99	10	Portland	Commerce/ITA, IRS	Commerce/ITA, IRS	
8/4/99	8	Casper	SBA,USDA/FS	SBA,USDA/FS	
8/19/99	3	Pittsburgh	DVA,OSHA	DVA,OSHA	
9/9/99	5	Madison	FDA,FCC	FDA,FCC	
9/13/99	2	Buffalo	HCFA,HUD	HCFA,HUD	

Notes:

1. The Immigration and Naturalization Service did not respond to the National Ombudsman's letter of invitation to speak at the hearing, but did offer testimony at a subsequent hearing. The Occupational Safety & Health Administration deserves recognition for agreeing to speak at the hearing on short notice.
2. The Federal Communications Commission responded to the National Ombudsman's letter of invitation and requested to participate in another hearing. The FCC did so at the hearing in San Jose, CA. The SBA deserves recognition for agreeing to speak at the Charlotte hearing on short notice.
3. The Securities and Exchange Commission (SEC) requested to be re-scheduled for a hearing in 1998. The Immigration and Naturalization Service (INS) did not respond to the National Ombudsman's letter of invitation. The Occupational Safety & Health Administration deserves recognition for agreeing to testify at the hearing on short notice.
4. The Department of Agriculture declined the invitation to participate in the hearing. The Health Care Financing Administration did not respond to the National Ombudsman's invitation. SBA deserves recognition for agreeing to testify at the St. Louis hearing on short notice.
5. The Equal Employment Opportunity Commission did not respond to the National Ombudsman's letter of invitation and stated that it has no record of receiving the invitation.
6. The Department of Commerce responded to the National Ombudsman's letter of invitation by offering to participate in a future hearing, instead. The Department of Housing & Urban Development also responded to the invitation by requesting to present at the Richmond hearing, rather than in Nashville.
7. The General Services Administration (GSA) refused to attend or testify at the hearings



#### 4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings

Region I, New England States, Hartford, Connecticut, June 24, 1999 (15)

*Small Business Representatives Offering Testimony:*

Elaine Thomas Williams	Connecticut Minority Supplier Development Council
Kathy Roby	Executive Director of Home & Community Health Services
Susan Wilson	Clinical Operations for Visiting Nurse Association of Central Connecticut (VNACC)
Lee Penn	Connecticut Chapter of the American Institute of Architects (AIA)
Joe Ready	Advanced Custom Cabinets
Virginia Humphrey	Executive Director of the Connecticut Association for Home Care
Walter Christensen	Owner, Big Wally's Subs
Ronald Dunson	Chairman Black Chamber of Commerce; president of the Main Street Business Resource Center
Mark Roscio,	Vice President and General Manager of Numet Machining Techniques
Annie Pennant	President, 3-P Graphics
Lisa Kolodziej	Director of Government and Economic Affairs, Greater Waterbury Chamber of Commerce
Yvonne R. Davis	Minority Business Enterprise Input Committee (MBEIC), Connecticut Minority Supplier Development Council
Fred Pierre-Louis	Computer Resources Systems
Theotis Fenn	Theo's Transportation

*Written testimony not presented at the hearing:*

James Cossingham	Jayco Enterprises
------------------	-------------------

Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999 (13)

*Small Business Representatives Offering Testimony:*

Hon. Robin Schimminger	Assemblyman, State of New York
Andrew J. Rudnick	President/CEO Buffalo-Niagara Partnership, New York
Clinton E. Brown	Clinton Brown Architects, PC
Gretchen Stringer	President, NAWBO
David S. Hammling	Managing Director, NY Construction Materials Association
Kathryn A. O'Donnell	President/CEO Botanica Interior Landscaping, New York
Joseph W. McIvor	EVP, Niagara Frontier Builders Association
J. Nassoff	Erie County Industrial Development Agency
Lawrence J. Zielinski	Visiting Nurses Association of Western New York
Alan DeLisle	Buffalo Economic Development Corporation
Archie Amos	Executive Director, MWBE Program, BEREC
John Militello	Diversified Construction of Western New York
Lumon Ross	Black Chamber of Commerce

Region III, South Atlantic States, Pittsburgh, Pennsylvania, August 19, 1999 (16)

*Small Business Representatives Offering Testimony:*

Todd McCracken	National Small Business United
Robert W. Goehring	Goehring & Associates
David McCorkle	Pennsylvania Food Merchants Association
Jim Young	The Rock
Jack Robinson	NuTech Laundry
Mark McNulty	Berner International
Allen Goldberg	Uniserve, Inc.
Susan Endersbee	R.E. Uptergraff Co.
Mark Lewis	R. L. Miller Co.
JoAnn R. Forrester	NAWBO/ SI Business Associates
James Converse	Pennsylvania Society of Surveyors
E. Jeanne Tyson	Royalty Home Health Care
Bill Walden	Tyler Medical
Elmer Fike	Fike Chemicals, Inc.
David Zimmerman	David W. Zimmerman Kennels
Paul Brown	Professional Limousine Services

Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999 (10)

*Small Business Representatives Offering Testimony:*

Tommy Thompson	Thompson Homes, Inc. of Owensboro ,KY
Karen Hinkle	Alacare Home Health in Birmingham, AL
Mardi Jones	National Association of Home Care's Regulatory Committee
Honorable Ruth Ann Palumbo	Chair, Kentucky Economic Development, Tourism and Energy Committee
Lalit Sarin	Shelby Industries, Shelbyville, KY
Keith Price	VP of Finance, Shelby Industries
Behrooz Jalayer	Bottomline Management, Inc., Louisville, KY
Jim McCord	McCord Technologies, Inc., Louisville, KY
Ali Rashid	Rashid's Enterprises, Miami, FL
Doug Haley	Wooven Heirlooms, Berea, KY

Region V, Midwest States, Madison, Wisconsin, September 9, 1999 (12)

*Small Business Representatives Offering Testimony:*

John Giegle	NAC, WBDFC
Steve Bowers	Moultrie Independent Telephone, Lovington, IL
Kathy Stupak-Thrall	Foxes Den Resort, Watersmeet, MI
William Baker	Wisconsin HomeCare Organizations, Madison, WI
James Gray	Holle Mackerel, Madison WI
Evonne Crawford-Gray	President of Holle Mackerel, Madison, WI
Deb Sirian	Allied HomeCare, Plattville, WI
Patty Richgels	Allied HomeCare, Dodgeville, WI
Jeanne Langlois	WAMES- HomeCare Medical, Milwaukee, WI
Sandy McQuinn	Citizen's Advocacy Panel (IRS)
Vince Ruffolo	NAC, Superior Mfg.
Richard Morris	Tax Payer Advocate for Wisconsin

Region VI, Southern States, Little Rock, Arkansas, March 4, 1999 (12)

*Small Business Representatives Offering Testimony:*

Jack Meadows	NAC
Al Miller	NAC, Miller Engineering of Newport, Arkansas
Mary Jane Rebick	CopySystem (NFIB)
Charles King	Arkansas Minority Purchasing Council
Charles Stoner	Welch State Bank
Bill Ferren	B-B-F Oil Company Inc., Pine Bluff, Ark
David Shapiro	SCORE National
Bob Hershfield	Hershfield Life & Health Care
Tyrone Davis	Davis Petroleum
Phylis Holyfield	President-elect of NAWBO
Bruce McFadden	Improved Construction Methods, Jacksonville, Ark.,
Goldman Jackson	Genesis Printing Company

Region VII, Heartland States, Omaha, Nebraska, May 11, 1999 (18)

*Small Business Representatives Offering Testimony:*

Rosemary Mucklow	Executive Director of the National Meat Association
Bill Dreffs	Carlson Meats, Blair, Nebraska,
Greg Ruehle	Nebraska Cattlemen's Association
John K. Hansen	Nebraska Farmers Union
Don Bartling	Board of Directors of the Nebraska Farm Bureau
Donald J. Mihovk	Nebraska Chamber of Commerce and Industry
Sister Janet Horstman	Guadeloupe Center
Lourdes Chavez-Madera	Lourdes Income Tax
Robert J. Wise	Missouri Apartment Association, Kansas City, Missouri
Sol Herscovici	Power Engineering & Mfg., Ltd. Waterloo, Iowa
James B. Meeham	James B. Meeham, PE, PC
Bob McCallie	McCallie and Associates
Steve Cady	Executive Director of the Nebraska Pork Producers
Michael E. Echols	Double E Computer Systems
Sandy Watchous	Home Health in Hays, Kansas
Phil Stier	ProCoat Painting
Mark D. Morehouse	M.B. Morehouse Painting

*Submitted written testimony only:*

Andy Winstrum	Pennfield Animal Testing
---------------	--------------------------

Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999 (16)

*Small Business Representatives Offering Testimony:*

Larry Bourret	Executive Vice President of the Wyoming Farm Bureau Federation
Rod Taylor	Wyoming Lodging & Restaurant Association
Rob Monroe	Wyoming Retail Merchants & Society of American Florist
John Boreczky	Byan Systems
Joy Earls	Montana Association of Home Health
Brenda Moser	Healthcare of Wyoming and Colorado
Ellen Williams	LHS Home Sharing
Ron Bailey	1 <sup>st</sup> National Bank-Gillette
Rick Bolander	Inter-Mountain Pipe
Charles Gilmore	McGarvin Moberly Construction Company
Dave Crnich	McMurray Construction
Roy Cohee	C&Y Transportation
Steve Lofton	71 Construction
Bob Tanner	Realtor
Nancy Stichert	Barnard Insurance
Carol Plumer	Horseplay Furnishings

Region IX, Western States, Las Vegas, Nevada, March 12, 1999 (8)

*Small Business Representatives Offering Testimony:*

Garry Barnes	NAC, Community First National Bank
Ruth Lopez Williams	Americade Home Health
Paul Davis	Blue Chip Enterprises
Jack Greco	NV Gas Retailers
Dan Weston	League of American Investors
Sam Males	SBDC
Renee T. Alberti	ETS, Inc.
Terry Holtz	Beveled Edge

Region X, Northwestern States, Portland, Oregon, July 7, 1999 (14)

*Small Business Representatives Offering Testimony:*

David Kroger	Oregon Association of Mortgage Brokers
Jim Montgomery	Sun Village Realty
Sam Brooks	Brooks and Associates, Incorporated
Mike Zaggone	Z-PRO International
Nick DeNicola	Rocco's Pizza
Janie Millican	Geo and Jem
Sal Kadri	Value Kad
Candi Phillips	Bio-Med Environmental Incorporated
Michelle La Vine	La Vine Cattle Company
Roger Giles	Business Ventures Incorporated
Roy Brower	WESCO Parts Cleaners
John Oxford	Fuel Processors Incorporated

*Written testimony not presented at the hearing:*

Dahinda Meda	Royal Blue Organics
Jake Rockwood	Early School Materials

## *5. Synopses of 1999 Regional Regulatory Fairness Board Hearings*

### *Region I, New England States, Hartford, Connecticut, June 24, 1999*

The Region I RegFair hearing was held in Hartford, Connecticut. It was an excellent hearing, with approximately 70 people attending and 15 small businesses testifying. Much of this success was due to the efforts of SBA Regional Administrator Pat McGowan and SBA District Director Marie Record. As was the case at last year's Region I hearing, one of the issues at the forefront of the hearing was HCFA's regulations for home health care providers who participate in Medicare and Medicaid. Additionally, both OSHA and the SBA were mentioned in multiple testimony. Representatives of seven of the eight Members of Congress from Connecticut attended. Ron Williams, the former Region I RegFair Board Chair and a respected business owner from Hartford, was instrumental in publicizing the hearing. Agency presenters were the HCFA and the EEOC.

### *Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999*

The Region II RegFair hearing was held in Buffalo, at the Headquarters of the Buffalo-Niagara Partnership. Congressmen John LaFalce and Jack Quinn attended and addressed the group. Congressman Reynolds office was also represented. The final RegFair hearing for 1999 was an immense success with over 70 attendees and testimony from 13 small business representatives. Representatives from HCFA and HUD testified on the implementation of the 10 recommendations included in the National Ombudsman's 1998 report to Congress. Peter Ruddy, chair of the Region II RegFair Board and a prominent business figure in the Buffalo area, was responsible for excellent publicity for the hearing. SBA Regional Administrator Tom Bettridge and SBA District Director Frank Sciortino and Deputy District Director Robert Novak provided support. Post-hearing press coverage was significant with the local print media *Business First* and the *Buffalo News* running multiple stories.

### *Region III, South Atlantic States, Pittsburgh, Pennsylvania, August 19, 1999*

The Region III RegFair hearing was held at the Duquesne Club in Pittsburgh, Pennsylvania on August 19<sup>th</sup>. Dr. Victor Tucci, Region III Chair, did a commendable job in obtaining local community support for the hearing. The hearing was an unqualified success with over 65 attendees and testimony from 16 small business representatives. Testimony covered a wide range of issues and agencies, including the IRS, OSHA, SBA and EPA. Major trade associations attending included the National Small Business United (NSBU), NAWBO, and the Pennsylvania Food Merchants Association among others. Attendees also included representatives from Congressmen Coyne, Doyle and English's offices. The DVA and OSHA testified on the 10 recommendations included in the National Ombudsman's 1998 report to Congress. SBA Regional Administrator Kerry Kirkland and SBA District Director Al Jones did an excellent job publicizing the event to the small business community in the region. Jere Glover, SBA's Chief Counsel for Advocacy, provided insightful remarks on the historical significance of SBREFA.

### *Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999*

The Region IV RegFair hearing was held in Louisville, Kentucky. The hearing was successful with 55 attendees and 10 small business representatives that testified on various issues. Representatives from three of the members of Congress from Kentucky attended. Bill Federhofer, SBA District Director, and Bruce Trautman, SBA Deputy District Director, did a very good job publicizing the event to the small business community in the region. State Representative Ruth Ann Palumbo, chair of the Economic Development, Tourism and Energy Committee discussed two primary goals of Kentucky state government: strengthen the rights of small business and to be supportive of SBREFA. She discussed Kentucky's attempts to nurture and cultivate an entrepreneurial society through the introduction of a state SBREFA bill. Bobby Clark,

vice-chair of the Region IV RegFair Board, obtained outstanding media coverage, scheduling interviews with the RegFair Board Members in the local press, the *Courier Journal*, before and after the hearing. Agency testifiers were the DOL and EPA.

*Region V, Midwest States, Madison, Wisconsin, September 9, 1999*

The Region V RegFair hearing was held in Madison, Wisconsin. Twelve small businesses testified on varied issues that included action by FCC, SBA, and HCFA. Most of the testimony focused on the apparent over-regulation by Federal representatives. Representatives from the health care industry offered some recommendations, including a suggestion that a commission be formed to assess HCFA's implementation of the Balanced Budget Act of '97. Thelma Ablan, the chair of the regional RegFair Board, and Reid Ribble, a member of the RegFair Board from Wisconsin, contacted a large number of print and other media outlets to garner pre-hearing publicity. Two National Advisory Council members addressed the audience and provided a perspective to SBREFA. Agency testifiers were the FDA and the FCC.

*Region VI, Southern States, Little Rock, Arkansas, March 4, 1999*

The RegFair public hearing for Region VI, the Southern States, was held at the University of Arkansas at Little Rock School of Law. Due to the efforts of Wallace Caradine, the RegFair Board Member from Arkansas, the hearing was successful with 12 small business owners testifying. Representatives from Senator Lincoln's office were in attendance. Ruben Guerrero, SBA Regional Administrator, was instrumental in encouraging the audience to fully participate and to take advantage of this opportunity to make known their concerns. NAWBO representatives testified on an ongoing issue with the DOL that this organization has raised at hearings over the last two years. NAWBO's concern involved the tax implications of the independent contractor versus employee determination. Attendance was average, at approximately 45 people, due to a scheduling conflict with the convening of the biannual legislative session. Agency testifiers were Customs and Commerce.

*Region VII, Heartland States, Omaha, Nebraska, May 11, 1999*

The RegFair hearing for Region VII, the Heartland States, was held in Omaha, Nebraska. The hearing was an unqualified success and well attended due to the efforts of Dan Morgan, the chair of the RegFair Board. Representatives of three of the Members of Congress from Nebraska attended. Most of the 18 testifiers raised issues related to the featured agencies. This was the first hearing at which many of the agricultural interest and representatives from the livestock industry voiced their concerns. Bruce Kent, SBA Regional Administrator, provided support and garnered positive publicity for the hearing. Most of the testimony was focused on the local offices of Federal agencies and criticism of agency customer service. A number of businesses testified about their frustration at simply trying to get answers to questions, the poor physical condition of the offices that precluded access to the Agencies, and overall discourteous or intimidating treatment. The pre-hearing publicity, which was carried in many of the associations' newsletters, contributed to the quality of the hearing. Agency testifiers were the USDA and INS.

*Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999*

The RegFair public hearing for Region VIII was held in Casper, Wyoming. It was an excellent hearing, with approximately 55 attendees and 16 small business owners offering testimony, which was heard by representatives the three Congressional offices in Wyoming. Substantive issues brought forward from some of the representatives of active trade associations included land ownership and use, paperwork reduction and the environment. Kathleen Piper, SBA Regional Administrator, promoted the hearing throughout the Rocky Mountain region. SBA Regional Advocate Joan Coplan represented Ms. Piper at the hearing. Chris Chavez,

SBA Director of Communications for the Region, was instrumental in securing excellent media coverage, including interviews for the RegFair Board Members with the local affiliates of NBC and CBS television, as well as the *Star Tribune*. Agency testifiers were the USDA Forest Service and the SBA.

*Region IX, Western States, Las Vegas, Nevada, March 12, 1999*

The Region IX public hearing was held in Las Vegas, Nevada. There were approximately 50 attendees. A representative from Senator Harry Reid's office attended. It is clear that the efforts of the SBA Regional and District offices are crucial in producing effective turnout for the hearings, as well as assisting in identifying and avoiding conflicting events. Of the 15 small businesses pre-scheduled to testify at the hearing, only eight testified. It was concluded that the large number of "no-shows", as well as the moderate turnout, could be attributed to the legislature being in session. Many of the key trade groups and small business owners were in Reno, attempting to get funding for local issues. John Scott, SBA District Director, and Thomas Guthrie, the Nevada RegFair Board Member, actively publicized this event to the small business community. Some substantive issues were brought forward, such as concerns with the EPA and air quality emissions in Nevada, as well as a number of SBA related issues, including size standards and certifications. Agency testifiers were OSHA and the IRS.

*Region X, Northwestern States, Portland, Oregon, July 7, 1999*

The Region X RegFair hearing was held in Portland, Oregon. It was an excellent hearing, with approximately 73 people attending and 14 small businesses offering testimony, which was heard by representatives of two congressional offices in Oregon and one from Washington. The hearing was a great success due, in part, to the efforts of former Regional Administrator Gretchen Sorenson, Phil Gentry, District Director and Don Matsuda, Deputy District Director in the Oregon SBA office. Clyde Stryker, chair of the Region X board, helped garner publicity for the event. Small business owners and trade group representatives presented testimony on a wide variety of Federal agencies. A common theme was the lack of consistent interpretation by regulators and how it leads to legal problems for small businesses. A small business owner, who was forced into bankruptcy by the IRS, provided stirring testimony. He described his experiences with that agency. After successfully re-organizing, he is now working to re-engineer the IRS through the Citizen's Advisory Panel. Agency testifiers were the International Trade Administration of the Department of Commerce and the IRS.

## Appendix F:

### **RegFair Materials**

- 1. Brochure*
- 2. Appraisal Form*
- 3. RegFair Card*
- 4. Board List, Map, Roles & Responsibilities, and Code of Ethics*



Appendix G:

**Agency Comments on 2000 Report to Congress**

## Appendix H.

### **National Ombudsman's Previous Annual Recommendations**

The Office of the National Ombudsman and RegFair Boards include recommendations in each annual Report to Congress. Each year, agencies are evaluated and rated on the prior year's recommendations. The recommendations are ongoing. The National Ombudsman, with advice from the RegFair Boards, will evaluate and rate agency regulatory enforcement and compliance activities against all recommendations made by the National Ombudsman. Small businesses will be given the recommendations in order to learn of the progress that has been made on regulatory fairness and to better frame their concerns.

The Office of the National Ombudsman and RegFair Boards feel strongly that the recommendations should not be treated as a one-time concession to small businesses, but as part of an ongoing process by which agencies and small businesses establish a small business friendly regulatory environment.

The following recommendations are from the National Ombudsman's first and second Annual Reports to Congress.

### **National Ombudsman's 1998 Recommendations**

#### *Recommendation 1*

Agencies should be more aggressive in informing small businesses when they change or amend the rules, processes, or regulations that specifically affect small businesses.

#### *Recommendation 2*

Agencies should develop an expedited review process in circumstances where agency actions may have a severely negative impact or threaten small businesses' survival. Additionally, time limits should be instituted to restrict the length of time agencies may take to review the circumstances of a case and issue response.

#### *Recommendation 3*

Agencies should build on the Administration's policy that employees are rated based on their efforts to ensure small businesses' compliance with Federal regulations rather than on the number of fines they collect. Also, evaluations should include factors that could lead to a negative rating for employees who take action without careful and objective review of the actual circumstances of each case.

#### *Recommendation 4*

Agencies must adopt and follow policies and procedures that make it clear to small businesses that they will not face retaliation for raising concerns about compliance and enforcement. While the National Ombudsman can assure small businesses that his office will not use their names when dealing with Federal agencies, small businesses seeking resolution directly from an agency should be equally assured that no retaliation will be taken for asserting their rights.

#### *Recommendation 5*

All agencies should place an executive summary on the cover of every major notice sent to small businesses to make them immediately aware of whether action is required or whether the notice is informational, the purpose of the publication, and to which businesses or industries it applies.

#### *Recommendation 6*

Agencies should use the mechanisms of the Office of Information and Regulatory Affairs at the Office of Management and Budget to resolve regulatory and jurisdictional disputes as quickly as possible. Agencies

need to resolve interagency conflicts quickly and respond to small businesses' need for clear and consistent guidance.

*Recommendation 7*

Agencies should provide more systematic and consistent education about SBREFA to all personnel to ensure they are familiar with the law and sensitive to small business needs—especially those that work with small businesses regularly.

*Recommendation 8*

The IRS should develop a program that provides a reasonable opportunity to get absolute and final interpretation of tax issues and allows small businesses a reasonable opportunity to pursue compliance without fear of penalty.

*Recommendation 9*

Small Business Development Centers, Senior Corp of Retired Executives, and other SBA resource partners should help aggressively disseminate information about SBREFA and RegFair.

*Recommendation 10*

Federal agencies should publicize information about their enforcement activities with regard to small businesses as compared with those taken with regard to larger businesses, individuals, non-profit organizations, and other entities, where appropriate.

**National Ombudsman's 1999 Recommendations**

*Recommendation 1*

Develop a regulatory fairness protocol for Federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a check list for the following:

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstances the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

*Recommendation 2*

Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

*Recommendation 3*

Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;

- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Administrative, final agency, and judicial appeals and the cost of such activities; and
- Use and success of informal and formal appeal channels for small versus large businesses.

#### *Recommendation 4*

Agencies heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

#### *Recommendation 5*

Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program. The training should sensitize employees to the unique needs of small business.

#### *Recommendation 6*

Federal agencies should be encouraged to give awards annually to personnel that improved the regulatory enforcement and compliance environment for small business. Federal agencies are also encouraged to nominate the top individual or team within each agency that did the most to improve the small business regulatory enforcement and compliance environment for an award to be given by the National Ombudsman.

#### *Recommendation 7*

In an effort to promote improved customer service concerning regulatory enforcement issues, agencies are encouraged to develop a formal customer referral system, within and among agencies, to help ensure that customers are directed to the appropriate office or agency. This will dovetail with the Administration's National Performance Review efforts to ensure greater customer service and satisfaction.

#### *Recommendation 8*

Federal agencies should make a greater effort to monitor the tone and clarity of letters and notices sent to small businesses. The National Ombudsman has learned of instances in which small businesses have received what appear to be threatening letters and notices in situations that do not warrant such an approach.

#### *Recommendation 9*

The Public Affairs Coordinator or other appropriate personnel within each regional office of the U.S. Small Business Administration should be designated as a contact person for the Regulatory Fairness Program.

#### *Recommendation 10*

In order to reduce small business confusion about the role of the National Ombudsman, the name should be changed by Congress to clarify the role of the office. Customers often confuse the role of this office with that of the traditional ombudsman for individual agencies, especially that of the SBA. Currently, the Ombudsman's official title, by statute is the Small Business and Agriculture Regulatory Enforcement Ombudsman.